

**WSR 19-04-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF REVENUE**

[Filed January 23, 2019, 1:44 p.m., effective January 24, 2019]

Effective Date of Rule: January 24, 2019.

Purpose: WAC 458-20-193 (Rule 193) and 458-20-221 (Rule 221) provide guidance regarding the need for a seller to have a physical presence in Washington in order to establish the required nexus for the state to impose a sales or use tax collection obligation on retail sales into Washington. The United States Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), allowed Washington to impose a sales or use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision and RCW 82.08.0254, 82.12.0255 and 82.32.733, effective October 1, 2018, the department will require a remote seller to collect retail sales or use tax on all taxable sales sourced to Washington if it exceeds \$100,000 in gross retail sales or two hundred retail transactions in the state during the current or prior calendar year. The department will begin the standard rule-making process in 2018 to reflect these changes, but until the final rules are adopted, the department wants the public to be aware that the current Rules 193 and 221 may contain outdated or incomplete information regarding who is required to collect sales or use tax on taxable retail sales into Washington.

Citation of Rules Affected by this Order: Amending WAC 458-20-193 and 458-20-221.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060, and 82.32.733.

Other Authority: RCW 34.05.350.

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

Reasons for this Finding: Taxpayers rely on Rules 193 and 221 to determine whether they are required to collect sales or use tax on taxable retail sales sourced to Washington. Due to the department's imposition of a sales or use tax collection obligation on remote sellers that exceed \$100,000 in gross retail sales or two hundred retail transactions in the state during the current or prior calendar year starting on October 1, 2018, under the authority of RCW 82.08.0254, 82.12.0255, and 82.32.733, Rules 193 and 221 require substantive updates using the standard rule-making process. Until these rules are amended, the department wants to ensure the public does not use current Rules 193 and 221 to determine their sales or use tax collection obligations beginning October 1, 2018.

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

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

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

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

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

Date Adopted: January 23, 2019.

Erin T. Lopez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-06-078, filed 3/6/18, effective 4/6/18)

**WAC 458-20-193 Interstate sales of tangible personal property.** (1) **Introduction.** The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington requires a remote seller to collect retail sales or use tax on all taxable sales sourced to Washington if it exceeds one hundred thousand dollars in gross retail sales or two hundred retail transactions in the state during the current or prior calendar year. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements. This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property.

(a) The following rules may also be helpful:

(i) WAC 458-20-178 Use tax and the use of tangible personal property.

(ii) WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.

(iii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(iv) WAC 458-20-19401 Minimum nexus threshold for apportionable receipts.

(b) This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(c) **Tangible personal property.** For purposes of this rule, the term "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses, but does not include steam, electricity, or electrical energy. It includes prewritten computer software (as such term is defined in RCW 82.04.215) in tangible form. However, this rule does not address electronically delivered prewritten computer software or remote access software.

(2) **Scope of rule.** In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington. This rule explains the applicable

nexus and place of sale requirements with respect to sales of tangible personal property. This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington. For information on payment responsibilities for use tax see WAC 458-20-178.

(3) **Organization of rule.** This rule is divided into three parts:

(a) Part I - Nexus standards for sales of tangible personal property;

(b) Part II - Sourcing sales of tangible personal property; and

(c) Part III - Drop shipment sales.

### **Part I - Nexus Standards for Sales of Tangible Personal Property**

(101) **Introduction.** A seller is subject to the state's B&O tax and retail sales tax with respect to sales of tangible personal property, if that seller has nexus. Washington applies specific nexus standards and thresholds that are used to determine whether a seller of tangible personal property has nexus. The nexus standards and thresholds described in this rule pertain only to sellers of tangible personal property. The remainder of Part I of this rule describes these nexus standards and thresholds and how they apply in the context of Washington's wholesaling and retailing B&O classifications and the retail sales tax.

(102) **Physical presence nexus standard.** A person who sells tangible personal property in a retail sale is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence. RCW 82.04.067(6). This standard applies to retail sales both in the retail sales tax and retailing B&O tax context.

(a) **Physical presence.** A person is physically present in this state if:

(i) The person has property in this state;

(ii) The person has one or more employees in this state;

(iii) The person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington; or

(iv) The person is a remote seller as defined in RCW 82.08.052 and is unable to rebut the substantial nexus presumption for remote sellers set out in RCW 82.04.067 (6)(c)(ii).

(b) **Property.** A person has property in this state if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Washington.

(c) **Employees.** A person has employees in this state if the person is required to report its employees for Washington unemployment insurance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

(d) **In-state activities.** Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products

in Washington. It is immaterial that the activities that establish nexus are not significantly associated with a particular sale into this state.

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales representative, or other person acting either at the direction of or on behalf of another.

A person performing the following nonexclusive list of activities, directly or through an agent or other representative, generally is performing activities that are significantly associated with establishing or maintaining a market for a person's products in this state:

(i) Soliciting sales of goods in Washington;

(ii) Installing, assembling, or repairing goods in Washington;

(iii) Constructing, installing, repairing, or maintaining real property or tangible personal property in Washington;

(iv) Delivering products into Washington other than by mail or common carrier;

(v) Having an exhibit at a trade show to maintain or establish a market for one's products in the state, except as described in subsection (102)(f) of this rule;

(vi) An online seller having a brick-and-mortar store in this state accepting returns on its behalf;

(vii) Performing activities designed to establish or maintain customer relationships including, but not limited to:

(A) Meeting with customers in Washington to gather or provide product or marketing information, evaluate customer needs, or generate goodwill; or

(B) Being available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is referenced by the seller in its marketing materials, communications, or other information accessible to customers.

(e) **Remote sellers - Click-through nexus.** Effective September 1, 2015, a remote seller as defined in RCW 82.08.052 is presumed to meet the physical presence nexus standard described in this subsection for purposes of the retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, refers potential customers to the remote seller, whether by link on an internet web site or otherwise, but only if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller through such agreements exceeds ten thousand dollars during the preceding calendar year. For more information related to the presumption and how to rebut the presumption, see RCW 82.08.052 and 82.04.067 (6)(c)(ii).

(f) **Trade convention exception.** For the physical presence nexus standard described in this subsection, the department may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per calendar year in Washington state in determining if such person is physically present in this state for the purposes of establishing substantial nexus with this state. This does not apply to persons making retail sales at a trade convention in this state, including persons taking orders for products or services where receipt

will occur at a later time in Washington state. RCW 82.32.-531.

**Definitions.** The following definitions apply only to (f) of this subsection:

(i) "Not marketed to the general public" means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

(ii) "Physically present in this state" and "substantial nexus with this state" have the same meaning as provided in RCW 82.04.067.

(iii) "Trade convention" means an exhibition for a specific industry or profession, which is not marketed to the general public, for the purposes of:

(A) Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or

(B) The exchange of information, ideas, and attitudes in regards to that industry or profession.

(103) **Economic nexus thresholds.** RCW 82.04.067 establishes substantial nexus thresholds that apply to persons who sell tangible personal property. For more information on the economic nexus thresholds, see WAC 458-20-19401.

**Application to retail sales.** Effective July 1, 2017, for B&O tax purposes, a person making retail sales taxable under RCW 82.04.250(1) or 82.04.257(1) is deemed to have substantial nexus with Washington if the person's receipts meet the economic nexus thresholds under RCW 82.04.067 (1)(c) (iii) and (iv). The receipts threshold is met if the person has more than two hundred sixty-seven thousand dollars of receipts (as adjusted by RCW 82.04.067(5)) from this state or at least twenty-five percent of the person's total receipts are in this state. For more information, see WAC 458-20-19401.

(104) **Application of standards and thresholds to wholesale sales.** The physical presence nexus standard described in subsection (102) of this rule, applies to wholesale sales for periods prior to September 1, 2015. Effective September 1, 2015, wholesale sales taxable under RCW 82.04.257(1) and 82.04.270 are subject to the RCW 82.04.-067 (1) through (5) economic nexus thresholds. Wholesaling activities not taxable under RCW 82.04.257(1) and 82.04.270 remain subject to the physical presence nexus standard. For more information, see WAC 458-20-19401.

(105) **Effect of having nexus.**

(a) **Retail sales.** A person that makes retail sales of tangible personal property and meets either the physical presence nexus standard or whose receipts meet the economic nexus thresholds described in RCW 82.04.067 (1)(c)(iii) or (iv) is subject to B&O tax on that person's retail sales received in the state. In addition, a person that makes retail sales of tangible personal property and meets the physical presence nexus standard, including as described in subsection (102)(e) of this rule, is also responsible for collecting and remitting retail sales tax on that person's sales of tangible personal property sourced to Washington, unless a specific exemption applies.

(b) **Wholesale sales.** A person that makes wholesale sales of tangible personal property and has nexus with Washington (as described in subsection (104) of this rule) is subject to B&O tax on that person's wholesale sales sourced to Washington.

(106) **Trailing nexus.** Effective July 1, 2017, for B&O tax purposes, a person is deemed to have substantial nexus with Washington for the current year if that person meets any of the requirements in RCW 82.04.067 in either the current or immediately preceding calendar year. Thus, a person who stops the business activity that created nexus in Washington continues to have nexus in the calendar year following any calendar year in which the person met any of the requirements in RCW 82.04.067 (also known as "trailing nexus").

Prior to July 1, 2017, RCW 82.04.220 provided that for B&O tax purposes a person who stopped the business activity that created nexus in Washington continued to have nexus for the remainder of that calendar year, plus one additional calendar year.

The department of revenue applies the same trailing nexus period for retail sales tax and other taxes reported on the excise tax return.

(107) **Public Law 86-272.** Public Law 86-272 (15 U.S.C. Sec. 381 et. seq.) applies only to taxes on or measured by net income. Washington's B&O tax is measured by gross receipts. Consequently, Public Law 86-272 does not apply.

**Part II - Sourcing Sales of Tangible Personal Property**

(201) **Introduction.** RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on "sourcing rules" established under the streamlined sales and use tax agreement. Sourcing rules for the lease or rental of tangible personal property are beyond the scope of this rule, as are the sourcing rules for "direct mail," "advertising and promotional direct mail," or "other direct mail" as such terms are defined in RCW 82.32.730. See RCW 82.32.-730 for further explanation of the sourcing rules for those particular transactions.

(202) **Receive and receipt.**

(a) **Definition.** "Receive" and "receipt" mean the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property.

(b) Receipt by a shipping company.

(i) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.

(ii) A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

(203) **Sourcing sales of tangible personal property - In general.** The following provisions in this subsection apply to sourcing sales of most items of tangible personal property.

(a) **Business location.** When tangible personal property is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

**Example 1.** Jane is an Idaho resident who purchases tangible personal property at a retailer's physical store location in Washington. Even though Jane takes the property back to Idaho for her use, the sale is sourced to Washington because Jane received the property at the seller's business location in Washington.

**Example 2.** Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

**Example 3.** An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

**Example 4.** The same purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser) to pick up the goods in Washington and deliver them to the purchaser's out-of-state location. Because "receive" and "receipt" do not include possession by the shipping company, the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location and not when the shipping company takes possession of the goods in Washington. The sale is not subject to B&O tax or retail sales tax.

(b) **Place of receipt.** If the sourcing rule explained in (a) of this subsection does not apply, the sale is sourced to the location where receipt by the purchaser or purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller.

(i) The term "purchaser" includes the purchaser's agent or designee.

(ii) The term "purchaser's donee" means a person to whom the purchaser directs shipment of goods in a gratuitous transfer (e.g., a gift recipient).

(iii) Commercial law delivery terms, and the Uniform Commercial Code's provisions defining sale or where risk of loss passes, do not determine where the place of receipt occurs.

(iv) The seller must retain in its records documents used in the ordinary course of the seller's business to show how the seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or

(C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

- The seller's name and address;
- The purchaser's name and address;
- The place of delivery, if different from the purchaser's address; and
- The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

**Example 5.** John buys luggage from a Department Store that has nexus with Washington (as in Example 2), but has the store ship the luggage to John in Washington. Department Store has nexus with Washington, and receipt of the luggage by John occurred in Washington. Department Store owes Washington retailing B&O tax and must collect Washington retail sales tax on this sale.

**Example 6.** Parts Store is located in Washington. It sells machine parts at retail and wholesale. Parts Collector is located in California and buys machine parts from Parts Store. Parts Store ships the parts directly to Parts Collector in California, and Parts Collector takes possession of the machine parts in California. The sale is not subject to B&O or retail sales taxes in this state because Parts Collector did not receive the parts in Washington.

**Example 7.** An out-of-state seller with nexus in Washington uses a third-party shipping company to ship goods to a customer located in Washington. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes. The sale is subject to B&O and retail sales tax in this state because the purchaser has taken possession of the goods in Washington.

**Example 8.** A Washington purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller at its out-of-state location, and deliver those goods to the Washington purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer. When the affiliated shipping company takes possession of the goods out-of-state, the Washington purchaser has not received the goods out-of-state. Possession by a shipping company on behalf of a purchaser is not receipt for purposes of this rule, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the buyer. Receipt occurs when the buyer takes possession of the goods in Washington. The sale is subject to B&O and retail sales tax in this state.

**Example 9.** An instate seller arranges for shipping its goods to an out-of-state purchaser by first delivering its goods to a Washington-based shipping company at its Washington location for further transport to the out-of-state customer's location. Possession of the goods by the shipping company in Washington is not receipt by the purchaser for

Washington tax purposes, and the sale is not subject to B&O and retail sales tax in Washington.

**Example 10.** An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

**Example 11.** Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Company ABC directs Company XYZ to ship the goods by a for-hire carrier to a commercial storage warehouse in Washington. The goods will be considered as having been received by Company ABC when the goods are delivered at the commercial storage warehouse. Assuming Company XYZ has nexus, Company XYZ is subject to B&O tax and must collect retail sales tax on the sale.

(c) **Other sourcing rules.** There may be unique situations where the sourcing rules provided in (a) and (b) of this subsection do not apply. In those cases, please refer to the provisions of RCW 82.32.730 (1)(c) through (e).

(204) **Sourcing sales of certain types of property.**

(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

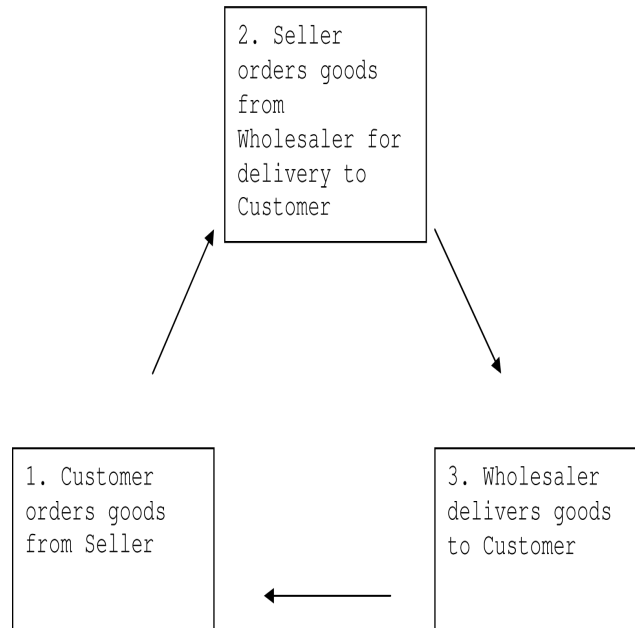
(b) **Sales of motor vehicles, watercraft, airplanes, manufactured homes, etc.** Sales of the following types of property are sourced to the location at or from which the property is delivered in accordance with RCW 82.32.730 (7)(a) through (c): Watercraft; modular, manufactured, or mobile homes; and motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" as defined in RCW 82.32.730. See WAC 458-20-145 (2)(b) for further information regarding the sourcing of these sales.

(c) **Sales of flowers and related goods by florists.** Sales by a "florist" are subject to a special origin sourcing rule. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules, see RCW 82.32.730 (7)(d) and (9)(e) and WAC 458-20-158.

**Part III - Drop Shipments**

(301) **Introduction.** A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a wholesaler and instructs that wholesaler to deliver the property directly to the seller's customer. The place of receipt in a drop shipment transaction is where the property is delivered (i.e., the seller's

customer's location). Below is a diagram of a basic drop shipment transaction:



The following subsections discuss the taxability of drop shipments in Washington when:

- (a) The seller and wholesaler do not have nexus;
- (b) The seller has nexus and the wholesaler does not;
- (c) The wholesaler has nexus and the seller does not; and
- (d) The seller and wholesaler both have nexus. In each of the following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit or other approved exemption certificate has been acquired to document any wholesale sales in Washington. For information about reseller permits issued by the department, see WAC 458-20-102.

(302) **Seller and wholesaler do not have nexus.** Where the seller and the wholesaler do not have nexus with Washington, sales of tangible personal property by the seller to the customer and the wholesaler to the seller are not subject to B&O tax. In addition, neither the seller nor the wholesaler is required to collect retail sales tax on the sale.

(303) **Seller has nexus but wholesaler does not.** Where the seller has nexus with Washington but the wholesaler does not have nexus with Washington, the wholesaler's sale of tangible personal property to the seller is not subject to B&O tax and the wholesaler is not required to collect retail sales tax on the sale. The sale by the seller to the customer is subject to wholesaling or retailing B&O tax, as the case may be. The seller must collect retail sales tax from the customer unless specifically exempt by law.

(304) **Wholesaler has nexus but seller does not.** Where the wholesaler has nexus with Washington but the seller does not have nexus with Washington, wholesaling B&O tax applies to the sale of tangible personal property by the wholesaler to the seller for shipment to the seller's customer. The sale from the seller to its Washington customer is not subject

to B&O tax, and the seller is not required to collect retail sales tax on the sale.

**Example 12.** Seller is located in Ohio and does not have nexus with Washington. Seller receives an order from Customer, located in Washington, for parts that are to be shipped to Customer in Washington for its own use as a consumer. Seller buys the parts from Wholesaler, which has nexus with Washington, and requests that the parts be shipped directly to Customer. Seller is not subject to B&O tax and is not required to collect retail sales tax on its sale to Customer because Seller does not have nexus with Washington. The sale by Wholesaler to Seller is subject to wholesaling B&O tax because Wholesaler has nexus with Washington and Customer receives the parts (i.e., the parts are delivered to Customer) in Washington.

(305) **Seller and wholesaler have nexus with Washington.** Where the seller and wholesaler have nexus with Washington, wholesaling B&O tax applies to the wholesaler's sale of tangible personal property to the seller. The sale from the seller to the customer is subject to wholesaling or retailing B&O tax as the case may be. The seller must collect retail sales tax from the customer unless the sale is specifically exempt by law.

AMENDATORY SECTION (Amending WSR 89-06-016, filed 2/23/89, effective 4/1/89)

**WAC 458-20-221 Collection of use tax by retailers and selling agents.** The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington requires a remote seller to collect retail sales or use tax on all taxable sales sourced to Washington if it exceeds one hundred thousand dollars in gross retail sales or two hundred retail transactions in the state during the current or prior calendar year. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements.

(1) **Statutory requirements.** RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state. These are activities which are sufficient under the Constitution of the United States to require the collection of use tax.

(2) **Definitions.**

(a) "Maintains a place of business in this state" includes:

(i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) **Liability of buyers for use tax.** Persons in this state who buy articles of tangible personal property at retail are liable for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) **Obligation of sellers to collect use tax.** Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) **Local use tax.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform statewide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform statewide rate or not eligible to collect at the uniform state rate shall collect local use tax in accordance with WAC 458-20-145.

(6) **Reporting frequency.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be required to file returns and remit use tax more frequently than quarterly.

(7) **Selling agents.** RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) **Time and manner of collection.** The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) **Effective date.** This rule shall take effect on April 1, 1989.

Citation of Rules Affected by this Order: New WAC 192-210-201.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.04.310, 50.12.042, 50.20.190, 50.24.020.

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: There are thousands of federal employees in Washington who are working without pay as a result of the longest federal shutdown in United States history. These employees need the economic support unemployment benefits can provide while they remain unpaid through no fault of their own. Therefore, emergency rules are required to preserve the general welfare and allow government employees working without pay as a result of this shutdown to receive unemployment benefits.

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

Number of Sections Adopted at the Request of a Non-governmental 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 1, 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: January 24, 2019.

Suzan G. LeVine  
Commissioner

#### NEW SECTION

**WAC 192-210-201 Federal employees affected by a government shutdown** (1) For purposes of this rule, a "federal employee affected by a government shutdown" is defined as an individual who, on or after December 22, 2018, is a full time or part time employee of the United States government, or of any agency or instrumentality thereof, who is not being paid timely solely due to a lapse in appropriations. For purposes of this section, "not being paid timely" means not receiving payment of wages on the regular pay date designated by the federal government or agency.

(2) Federal employees affected by a government shutdown are deemed to be "unemployed" under RCW 50.04.-310, regardless of whether they are performing services for the United States, or for any agency or instrumentality thereof, and are eligible for unemployment benefits so long as they otherwise meet the eligibility and qualification requirements of the Employment Security Act, PROVIDED, that the department will consider such claimants to be attached to their employers under WAC 192-180-005 (1)(a)

#### **WSR 19-04-008**

#### **EMERGENCY RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed January 24, 2019, 11:06 a.m., effective January 24, 2019, 11:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The rule deems federal employees who are not being paid timely solely due to a lapse in appropriations "unemployed" and eligible for unemployment benefits so long as they otherwise meet the requirements of the Employment Security Act. In addition, under the rule, federal employees eligible for unemployment benefits as a result of the shutdown are considered attached to their employer and therefore not required to register for work or look for other work beginning with the first week of an individual's claim and ending the week the federal government appropriates funding to pay the individual's wages. Finally, the rule makes clear that a federal employee receiving back pay shall reimburse the employment security department for benefits paid.

and will not require them to register for work or look for other work beginning with the first week of an individual's claim and ending the week the United States government appropriates funding to pay the individual's wages. HOWEVER, if the individual is recalled to work and refuses to return to work for their government employer prior to the appropriation of funds used to pay their wages, they will no longer be considered attached to their employer and will be required to register for work and look for work.

(3) If a federal employee affected by a government shutdown receives back pay intended to compensate the individual for the week or weeks for which the individual did not receive wages, the individual shall repay the department any benefits received for any week covered by an award of back pay. If the individual fails to repay the department, the department may establish a benefit overpayment pursuant to RCW 50.20.190 and RCW 50.24.020.

### WSR 19-04-010

#### EMERGENCY RULES

#### DEPARTMENT OF HEALTH

[Filed January 24, 2019, 4:36 p.m., effective January 24, 2019, 4:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-70-050 Quality assurance testing and 246-70-060 Compliant product labeling, the department of health (department) is temporarily repealing requirements regarding the screening of heavy metals for medical marijuana products. This emergency rule also temporarily requires the labeling of such products for sale as not having been tested for heavy metals. This measure is necessary because the single certified third-party laboratory in Washington state will no longer accept marijuana samples for cannabis heavy metal testing on January 25, 2019, and will stop all testing for heavy metals on January 31, 2019. This emergency rule will remain in effect for one hundred twenty days, or until another certified third-party laboratory is again established, whichever occurs first.

Citation of Rules Affected by this Order: Amending WAC 246-70-050 and 246-70-060.

Statutory Authority for Adoption: RCW 69.50.375.

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

Reasons for this Finding: RCW 69.50.375(4) provides that the department and the Washington state liquor and cannabis board (LCB) adopt rules on the requirements of marijuana concentrates, useable marijuana, and marijuana products that may be sold or provided at no charge to qualifying patients or designated providers at retail outlets with a medical endorsement. RCW 69.50.375 (4)(a) through (e) describe THC concentration ratios, labeling and safe handling requirements, and other requirements, such as pesticide testing.

Although heavy metal screening is not specifically required in the statute, the department included it when it adopted WAC 246-70-050 (1)(b) and (c) and (3). After Janu-

ary 31, 2019, there will no longer be a single LCB certified laboratory providing heavy metal screening. As a result, licensed marijuana producers and processors will be unable to get their products tested for heavy metals as required under the current rule. This will cause products to be noncompliant with the current rule. As a result, these products cannot be sold or marketed as compliant products, reducing access and availability of safe products for qualifying patients, particularly patients with compromised immune systems.

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

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

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

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

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

Date Adopted: January 24, 2019.

Jessica Todorovich  
Chief of Staff

AMENDATORY SECTION (Amending WSR 16-20-022, filed 9/27/16, effective 10/28/16)

**WAC 246-70-050 Quality assurance testing.** (1) Testing interval and sample size.

(a) The testing requirements of this section are in addition to the tests required under WAC 314-55-102 and shall be performed by a third-party testing lab certified by the WSLCB.

(b) Pesticide screening (~~and heavy metal screening are~~) is required at the following time(s):

(i) For all marijuana flowers, trim, leaves, or other plant matter, intended for retail sale without extraction, at the time of harvest or when placed into lots.

(ii) For all products intended for retail sale as concentrates, extracts, or for use as an intermediate product, screening is required only after extraction and is not required according to (b)(i) of this subsection.

(iii) An imported cannabinoid must be screened prior to addition to any marijuana product.

(c) Minimum sample size for pesticide screening (~~and heavy metal screening~~):

(i) For screening at harvest, three grams for every three pounds of harvested product. Harvest amounts will be rounded up to the next three-pound interval. For example, a harvest of less than three pounds requires at least three grams for testing; a harvest of three or more pounds but less than six pounds requires at least six grams for testing.

(ii) For screening a lot, three grams per lot.

(iii) For screening a batch of finished concentrates, extracts, or intermediate products, two grams per batch.



(iv) For screening imported cannabinoids, one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(d) Mycotoxin screening is required whenever microbial testing for any marijuana product is required by the WSLCB.

(e) Licensed marijuana producers, licensed marijuana processors, and certified third-party labs must follow the sampling protocols in chapter 314-55 WAC.

(f) At the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or processor.

(2) Pesticide screening.

(a) Only allowed pesticides shall be used in the production, processing, and handling of marijuana. Pesticide use must be consistent with the manufacturer's label requirements.

(b) Certified third-party labs must screen for any pesticides that are not allowed and are designated as having the potential for misuse on a list created, maintained, and periodically updated by the department in consultation with the Washington state department of agriculture and the WSLCB. Certified third-party labs must also screen for pyrethrins and piperonyl butoxide (PBO) in samples of concentrates, extracts, intermediate products, and imported cannabinoids. Certified third-party labs may also screen for additional pesticides.

(c) For purposes of the pesticide screening, a sample of any marijuana product shall be deemed to have failed if a pesticide that is not allowed is detected above the action level for that pesticide as determined by the WSLCB under chapter 314-55 WAC.

(d) A harvest, lot, or batch deemed to have failed pesticide screening must be destroyed according to chapter 314-55 WAC. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed pesticide screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed pesticide screening must not be added to any marijuana product.

(e) Pesticides containing allowed pyrethrins or piperonyl butoxide (PBO) may not be applied less than seven days prior to harvest.

(f) All individuals applying pesticides shall adhere to the agricultural use requirements on the label. Pesticide applications that do not follow the pesticide product label may pose risks to public health and safety and are a violation of chapter 15.58 RCW.

(3) ~~Heavy metal screening.~~

~~(a) For the purposes of heavy metal screening, a sample shall be deemed to have passed if it meets the following standards:~~

| Metal             | Limit, µg/daily dose (5 grams) |
|-------------------|--------------------------------|
| Inorganic arsenic | 10.0                           |
| Cadmium           | 4.1                            |
| Lead              | 6.0                            |

| Metal   | Limit, µg/daily dose (5 grams) |
|---------|--------------------------------|
| Mercury | 2.0                            |

~~(b) A harvest, lot, or batch deemed to have failed heavy metal screening must be destroyed according to chapter 314-55 WAC. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed heavy metal screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed heavy metal screening must not be added to any marijuana product.~~

(4)) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

| Test   | Specification          |
|--|------------------------|
| The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2 | <20 µG/kg of substance |
| Ochratoxin A   | <20 µG/kg of substance |

~~((5))~~ (4) Terpenes.

(a) Terpene analysis is not required. If terpene content is listed on product packaging or label, a terpene analysis from a certified third-party lab must be available for review by the consumer upon request.

(b) The addition of any terpene to useable marijuana is prohibited. Only the following terpenes may be added to a marijuana product other than useable marijuana.

(i) Terpenes naturally occurring in marijuana; or

(ii) Terpenes permitted or generally recognized as safe by, and used in accordance with, 21 C.F.R., Chapter I, subchapter B.

**AMENDATORY SECTION** (Amending WSR 16-20-022, filed 9/27/16, effective 10/28/16)

**WAC 246-70-060 Compliant product labeling.** (1)

Products meeting the requirements of this chapter must be readily identifiable to the consumer by placement on the product's label of the appropriate logo found in WAC 246-70-090. A logo must be used in compliance with this chapter and any guidance for use developed by the department. A logo may not be used on any object or merchandise other than a compliant marijuana product. A logo used in accordance with this chapter must be printed in either black or dark blue.

(2) Labels for compliant products must not:

(a) Use any word(s), symbol, or image commonly used in or by medical or pharmaceutical professions including, but not limited to: Depiction of a caduceus, staff of Asclepius, bowl of Hygieia, or mortar and pestle; or use of the word "prescription" or letters "RX";

(b) State or imply any specific medical or therapeutic benefit; or

(c) Mimic a brand of over-the-counter or legend drug.

(3) The label must prominently display the following statements:

(a) "This product is not approved by the FDA to treat, cure, or prevent any disease."; and

(b) "Not tested for heavy metals."

(4) Only marijuana products complying with this chapter may use a logo found in WAC 246-70-090. Marijuana products that use a logo but do not meet the requirements in this chapter will be reported to the WSLCB.

**WSR 19-04-012**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 19-16—Filed January 24, 2019, 5:33 p.m., effective January 24, 2019, 5:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab fishery rules.

Citation of Rules Affected by this Order: Amending WAC 220-340-420.

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

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

Reasons for this Finding: This rule is needed to restrict delivery of commercially caught crab that were harvested in areas that tests have shown high levels of domoic acid are present in the crab. These regulations are needed to protect public health and safety consistent with Washington department of health prescribed domoic acid action levels. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental 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: January 24, 2019.

Ron Warren  
for Kelly Susewind  
Director

**[NEW SECTION]**

**WAC 220-340-42000M Commercial crab fishery—Unlawful acts.** Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) Crab size and sex restrictions. It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crab; or

(b) Any male Dungeness crab measuring less than 6-1/4 inches, caliper measurement, at the widest part of the shell immediately in front of the points (tips).

(2) Violation of subsection (1) of this section is a gross misdemeanor or class C felony depending on the value of fish or shellfish taken, possessed, or delivered, punishable under RCW 77.15.550 (1)(c).

(3) Incidental catch may not be retained. It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any commercial crab fishing.

(4) Net fishing boats must not have crab on board. It is unlawful for any person to possess any crab on board a vessel geared or equipped with commercial net fishing gear while fishing with the net gear for commercial purposes or while commercial quantities of food fish or shellfish are on board. Violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550(1), depending on the quantity of crab taken or possessed.

(5) Area must be open to commercial crabbing. It is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crab for commercial purposes in any area or time that is not open for commercial crabbing by rule of the department, except when acting lawfully under the authority of a valid gear recovery permit as provided in WAC 220-340-450.

(6) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, or a gross misdemeanor punishable under RCW 77.15.522 depending on the circumstances of the violation.

(7) When it is unlawful to buy or land crab from the ocean without a crab vessel inspection. It is unlawful for any fisher or wholesale fish buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel that has not been issued a Washington crab vessel inspection certificate during the first 30 days following the opening of a coastal crab season.

(a) Authorized department personnel will perform inspections for Washington crab vessel inspection certificates no earlier than 12 hours prior to the opening of the coastal crab season and during the following 30-day period.

(b) A Washington crab vessel inspection certificate may be issued to vessels made available for inspection at a Washington coastal port that:

(i) Are properly licensed commercial crab fishing; and

(ii) Contain no Dungeness crab on board the vessel.

(8) Violation of subsection (7) of this section is a gross misdemeanor, punishable under RCW 77.15.550 (1)(a) Violation of commercial fishing area or time—Penalty.

(9) Coastal - Barging of crab pots by undesignated vessels. It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the 64-hour period immediately preceding the season opening date and

during the 48-hour period immediately following the season opening date;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(10) Violation of subsection (9) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(11) It is unlawful to deliver crab into Washington that were caught in an area where crab viscera test results are at or above the Washington Department of Health action level of 30 parts per million for domoic acid, unless:

(a) the crab meat results from the same test are at or below the Washington Department of Health action level of 20 parts per million, then crab may be delivered provided they are eviscerated at a processing facility with an approved Hazard Analysis and Critical Control Point (HACCP) Plan.

(12) It is unlawful to deliver crab into Washington that were caught in an area adjacent to an area where crab viscera tested at or above the Washington Department of Health action level of 30 parts per million for domoic acid to which evisceration is required by the Oregon Department of Fish and Wildlife, unless:

(a) the crab are eviscerated at a processing facility with an approved Hazard Analysis and Critical Control Point (HACCP) Plan.

(13) Violation of subsection (11) or (12) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550 Violation of commercial fishing area or time - Penalty.

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

**WSR 19-04-020**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 19-17—Filed January 25, 2019, 12:43 p.m., effective February 1, 2019, 12:01 p.m.]

Effective Date of Rule: February 1, 2019, 12:01 p.m.

Purpose: Amend recreational razor clam rules.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000Y; and amending WAC 220-330-160.

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor

Clam Areas 3, 4 and 5 for recreational harvest. 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 the Request of a Non-governmental 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: January 25, 2019.

Kelly Susewind  
Director

**NEW SECTION**

**WAC 220-330-16000Y Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. February 1, 2019 through 11:59 p.m. February 3, 2019, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. February 1, 2019 through 11:59 p.m. February 1, 2019 razor clam and 12:01 p.m. February 3, 2019 through 11:59 p.m. February 3, 2019 digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(3) Effective 12:01 p.m. February 2, 2019 through 11:59 p.m. February 2, 2019, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) It is unlawful to dig for razor clams at any time in the Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 4, 2019:

WAC 220-330-16000Y Razor clams—Areas and seasons.

**WSR 19-04-034**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 19-15—Filed January 28, 2019, 2:57 p.m., effective February 1, 2019]

Effective Date of Rule: February 1, 2019.

Purpose: Amends recreational gamefish rules for the Sauk and Skagit rivers.

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

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

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

Reasons for this Finding: This rule is needed to open gamefish seasons in portions of the Sauk and Skagit rivers. The Skagit River steelhead fishery resource management plan received formal federal approval in April 2018, allowing the fishery to proceed. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental 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: January 28, 2019.

Kelly Susewind  
Director

**NEW SECTION**

**WAC 220-312-04000H Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-312-040, effective February 1 through April 30, 2019:

(1) Sauk River (Skagit/Snohomish County): from the mouth to the Darrington Bridge (Sauk Prairie Road Bridge).

(a) Release all fish except hatchery steelhead.

(b) Selective Gear Rules.

(c) Night Closure.

(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(2) Skagit River (Skagit Co.): from the Dalles Bridge in the town of Concrete to the Cascade River Road Bridge in Marblemount:

(a) Release all fish except hatchery steelhead.

(b) Selective Gear Rules.

(c) Night Closure.

(d) It is unlawful to fish from a floating device that is under power.

**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 May 1, 2019:

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

**WSR 19-04-035**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed January 28, 2019, 3:20 p.m., effective January 29, 2019]

Effective Date of Rule: January 29, 2019.

Purpose: These rules will establish chapter 110-05 WAC, One hundred twenty-day provisional hires, for the department of children, youth, and families (DCYF). This chapter includes the requirements for one hundred twenty-day provisional hires which allows an employee in a group care facility to have unsupervised access to children in the care and custody of DCYF on a provisional basis pending the results of their Federal Bureau of Investigation [background check].

Citation of Rules Affected by this Order: New chapter 110-05 WAC.

Statutory Authority for Adoption: Chapter 43.216 RCW, RCW 74.15.030, Public Law 115-123.

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

Reasons for this Finding: These rules were previously filed as an emergency on October 1, 2018, WSR 18-20-091. At this time, the department is going through the normal rule-making process (WSR 18-21-125) and needs to extend these emergency rules in order to be able to meet the requirements enacted in Public Law 115-123, Family First Prevention Act. These changes went into effect October 1, 2018, are needed in order for the department to continue receiving Title IV-E funding.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 7, 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: January 28, 2019.

Brenda Villarreal  
Rules Coordinator

## Chapter 110-05 WAC

### ONE HUNDRED TWENTY-DAY PROVISIONAL HIRES

#### NEW SECTION

**WAC 110-05-0010 What is the purpose of this chapter?** WAC 110-05-0010 through 110-05-0070 defines when the one hundred twenty-day provisional hire is allowed by the department of children, youth, and families (DCYF).

#### NEW SECTION

**WAC 110-05-0020 What is the purpose of the one hundred twenty-day provisional hire?** The one hundred twenty-day provisional hire allows group care facilities to hire an employee on a provisional basis pending the results of their Federal Bureau of Investigation (FBI) background check.

#### NEW SECTION

**WAC 110-05-0030 What definitions apply to one hundred twenty-day provisional hires?** "Agency" means any private agency providing services to children, juveniles, and vulnerable adults.

"Employee" means an employee of an agency defined in RCW 74.15.020 that receives children for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children for foster care or placement of children for adoption; or an employee of a department contractor when that contractor provides for the care, supervision, case management, or treatment, of children who are receiving child protective services or child welfare services as defined in RCW 74.15.020.

"Entity" means, but is not limited to, a licensed facility, corporation, partnership, sole proprietorship, or a contracted or certified service provider.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Hire" means engagement by an entity to perform specific agreed duties as a paid employee or a contract employee.

"Individual" means an employee or a contract employee in a group care facility.

#### NEW SECTION

**WAC 110-05-0040 Who is responsible for approving the one hundred twenty-day provisional hire?** The entity is responsible for approving individuals for the one hundred twenty-day provisional hire.

#### NEW SECTION

**WAC 110-05-0050 When are individuals eligible for the one hundred twenty-day provisional hire?** Individuals who have lived three consecutive years in Washington state before submitting their application, cleared the in-state background check process, and submitted fingerprints are eligible for the one hundred twenty-day provisional hire. The fingerprint process must be completed as required by the applicable DCYF program.

#### NEW SECTION

**WAC 110-05-0060 When does the one hundred twenty-day provisional hire begin?** The one hundred twenty-day provisional hire may begin when notified by DCYF the conditions in WAC 110-05-0050 have been met.

#### NEW SECTION

**WAC 110-05-0070 Are there instances when the one hundred twenty-day provisional hire is not available?** The one hundred twenty-day provisional hire is not available to an entity requesting:

- (1) An initial license;
- (2) An initial contract; or
- (3) Approval as a family child day care home provider, child placing agency employee, foster parent, or adoptive parent (see 42 U.S.C. Sec. 671 (a)(20)).

## WSR 19-04-036

### EMERGENCY RULES

### DEPARTMENT OF

### CHILDREN, YOUTH, AND FAMILIES

[Filed January 28, 2019, 3:21 p.m., effective January 29, 2019]

Effective Date of Rule: January 29, 2019.

Purpose: Changes are being made to the following WAC to align with the Family First Prevention Act. This change in legislation requires all employees working in a department of children, youth, and families licensed group care facility to complete fingerprint based background checks and out-of-state child abuse and neglect history checks of every state the individual has lived in the preceding five years before the background check application. These changes go into effect October 1, 2018.

Chapter 110-04 WAC, Background checks: WAC 110-04-0010 What is the purpose of this chapter?, 110-04-0020 What definitions apply to WAC 110-04-0030 through 110-04-0180 of this chapter?, 110-04-0030 Why are background checks done?, 110-04-0040 Who must have background checks?, 110-04-0060 Does the background check process apply to new and renewal licenses, certification, contracts, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children?, 110-04-0070 What happens if I don't comply with the background check requirement?, 110-04-0080 What does the background check cover?, 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?, 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?, 110-04-0120 If I have a conviction, may I ever have unsupervised access to children?, 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?, 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or if I have been pardoned for a crime?, and 110-04-0150 How will I know the status of the background check?

Chapter 110-145 WAC: WAC 110-145-1325 What is required to apply for a group care facility license?

Citation of Rules Affected by this Order: Amending WAC 110-04-0010, 110-04-0020, 110-04-0030, 110-04-0040, 110-04-0060, 110-04-0070, 110-04-0080, 110-04-0100, 110-04-0110, 110-04-0120, 110-04-0130, 110-04-0140, 110-04-0150, and 110-145-1325.

Statutory Authority for Adoption: For chapter 110-04 WAC is RCW 43.43.832; and for WAC 110-145-1325 is RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, PL 115-123.

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

Reasons for this Finding: These rules were previously filed as an emergency on October 1, 2018 (WSR 18-20-095), to meet the requirements in the Family First Prevention Act that went into effect October 1, 2018. At this time, the department is going through the permanent rule-making process (WSR 18-21-126) and needs to extend these rules to continue being in compliance with the federal legislation and to continue receiving Title IV-E funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 14, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: January 29, 2019.

Brenda Villarreal  
Rules Administrator

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

**WAC 110-04-0010 What is the purpose of this chapter?** This chapter establishes rules for background checks conducted by ~~((children's administration (CA) at))~~ the department of ~~((social and health services (DSHS)))~~ children, youth, and families (DCYF) for child welfare purposes and does not apply to background checks required for child care or early learning purposes as they are addressed in chapter 110-06 WAC. The department does background checks on individuals who are licensed, certified, contracted, employed in a group care facility, or authorized to care for or have unsupervised access to children. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

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

**WAC 110-04-0020 What definitions apply to WAC ~~((388-06A-0100 through 388-06A-0260)) 110-04-0030 through 110-04-0180 of this chapter?~~** The following definitions apply to WAC ~~((388-06A-0100 through 388-06A-0260)) 110-04-0030 through 110-04-0180 of this chapter:~~

**"Authorized" or "authorization"** means not disqualified by the department to work in a group care facility or have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

~~((**"CA"** means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child placing agencies, child protective services, child welfare services, and other services to children and their families.))~~

**"Certification"** means:

~~((+)) (a)~~ Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

~~((+)) (b)~~ Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

**"Children"** means a person who is one of the following:

~~((+)) (a)~~ Under eighteen years old;

~~((2))~~ Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;

~~(3))~~ (b) Up to twenty-one years of age and participating in the extended foster care program;

~~((4))~~ (c) Up to twenty-one years of age and under the custody of the Washington state juvenile rehabilitation administration.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Department" or ~~((DSHS))~~ "DCYF" means the department of ~~((social and health services (DSHS)))~~ children, youth, and families responsible for providing child welfare programs and services to children and their families and licensing foster homes, group care facilities and programs, and child placing agencies.

"I" and "you" refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

~~((DLR))~~ "Licensing division" or "LD" means the licensing division ~~((of licensed resources within children's administration. DLR))~~ within DCYF. LD licenses and monitors foster homes, child placing agencies and licensed group care facilities.

~~((I" and "you" refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.))~~

"Licensor" means either:

~~((1) A DLR))~~ (a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies ~~((established under this chapter))~~ that provide foster family homes or group care facilities under chapters 110-145, 110-147, and 110-148 WAC; or

~~((2))~~ (b) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"Unsupervised" means will not or may not be in the presence of:

~~((1))~~ (a) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

~~((2))~~ (b) Another individual who has been previously approved by ~~((children's administration))~~ DCYF.

"We" refers to the department, including licensors and ~~((social workers))~~ caseworkers.

"WSP" refers to the Washington state patrol.

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

**WAC 110-04-0030 Why are background checks done?** ~~((The children's administration))~~ DCYF does background checks to help safeguard the health, safety, and well-being of children in out of home care. By doing background checks, the department reduces the risk of harm to children from individuals ~~((that))~~ who have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, ~~((or authorized))~~ authorization to be employed at a group care facility, or authorization to have unsupervised access to children.

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

**WAC 110-04-0040 Who must have background checks?** (1) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home.

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

**WAC 110-04-0060 Does the background check process apply to new and renewal licenses, certification, contracts, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children?** For ~~((children's administration))~~ DCYF, these regulations apply to all applications for new and renewal licenses, contracts, certifications, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children that are processed by ~~((the children's administration))~~ DCYF after the effective date of this chapter.

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

**WAC 110-04-0070 What happens if I ~~((don't))~~ do not comply with the background check requirement?** The department will deny, suspend or revoke your license, contract, or certification, or disqualify you to care for children if you or someone on the premises of your home or facility having unsupervised access, or an employee at a group care facility does not comply with the department's requirement for a background check.

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

**WAC 110-04-0080 What does the background check cover?** (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for ~~((children's administration))~~ DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) ~~((through))~~ and (2) of this section, background checks conducted by ~~((children's administration))~~ DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home and for all staff working in a group care facility, including those not directly working with children:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(4) Except as required in ~~((WAC 388-06A-0150 (4)(b), children's administration))~~ subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

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

**WAC 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?** (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children. Those felony convictions are as follows:

- (a) Child abuse and/or neglect;
- (b) Spousal abuse;
- (c) A crime against a child (including child pornography);
- (d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault or battery); or
- (e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children in any home or facility.

(2) If you are convicted of one of the crimes listed in WAC ~~((388-06A-0170))~~ 110-04-0100 (1)(a) through (e), you will not be able to:

- (a) Receive a license to provide care to children;
- (b) Be approved for adoption of a child;
- (c) Be a contractor;
- (d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children;
- (e) Be authorized to be employed at a group care facility even if you do not work directly with children;
- ~~((f))~~ (f) Volunteer or participate as an intern in a home or facility that offers care to children; or
- ~~((g))~~ (g) Provide any type of care to children, if the care is funded by the state.

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

**WAC 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?** The department must disqualify you from licensing, contracting, certification, authorization for employment at a group care facility, or ~~((from having))~~ authorization for unsupervised access to chil-



dren if it has been less than five years from a conviction for the following crimes:

(1) Any felony physical assault or battery offense not included in WAC (~~(388-06A-0170)~~) 110-04-0100;

(2) Any felony violation of the following drug-related crimes:

(a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW);

(b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);

(c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);

(d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or

(e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.

(3) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from being authorized to be employed at a group care facility or having unsupervised access to children.

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

**WAC 110-04-0120** **If I have a conviction, may I ever be authorized to be employed at a group care facility or have unsupervised access to children?** (1) In two situations, (~~(DSHS)~~) DCYF may find a person with convictions able to be authorized to be employed at a group care facility or have unsupervised access to children:

(a) If the conviction for any crime listed in WAC (~~(388-06A-0180)~~) 110-04-0110 occurred more than five years ago; or

(b) If the conviction was for a crime other than those listed in WAC (~~(388-06A-0170 or 388-06A-0180)~~) 110-04-0100 or 110-04-0110.

(2) In both of these situations, (~~(DSHS)~~) DCYF must review your background to determine your character, suitability, and competence to have unsupervised access to children. In this review, (~~(DSHS)~~) DCYF must consider the following factors:

(a) The amount of time that has passed since you were convicted;

(b) The seriousness of the crime that led to the conviction;

(c) The number and types of other convictions in your background;

(d) Your age at the time of conviction;

(e) Documentation indicating you has successfully completed all court-ordered programs and restitution;

(f) Your behavior since the conviction; and

(g) The vulnerability of those that would be under your care.

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

**WAC 110-04-0130** **Will I be disqualified if there are pending criminal charges on my background check?** (1) The department will not license, contract, certify, authorize employment at a group care facility, or authorize (~~(a person to have)~~) unsupervised access to children to a person who (~~(have)~~) has a criminal charge pending for a disqualifying crime:

(a) Described in the Adoption and Safe Families Act of 1997(~~(, or a criminal charge pending for a disqualifying crime)~~); or

(b) That relates directly to child safety, permanence, or well-being.

(2) You may reapply for a license, contract, certification, or approval to have unsupervised access to children by providing proof to the department that the charge against you has been dropped or that you were acquitted.

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

**WAC 110-04-0140** **Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime?** If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, authorization for employment at a group care facility, or authorization for unsupervised access to children.

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

**WAC 110-04-0150** **How will I know the status of the background check?** (1) If you have been approved by the background check:

(a) The department will notify you(;) and your prospective employer(~~(, or you)~~) or supervisor(;) if you have requested a contract, authorization to be employed at a group care facility, or approval for unsupervised access to children.

(b) The department will not directly notify you, and will instead continue the process for approving your application if you have requested a license or certification to care for children.

(2) If you have been disqualified by the background check:

(a) The department will notify you in writing and include any laws and rules that require disqualification;

(b) The department will also notify the care provider, the prospective employer, or the licensor; and

(c) You will not receive a license, contract, certification, or be authorized to be employed at a group care facility or have unsupervised access to children.

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

**WAC 110-145-1325 What is required to apply for a group care facility license?** (1) You, the person responsible for the license, must submit a completed application which is available from the DCYF licensing division (~~(of licensed resources, children's administration)~~).

(2) You must submit a completed background authorization form for your executive director, agency staff including those not directly working with children, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter (~~(388-06A)~~) 110-04 WAC.

(3) You must ensure (~~(that an)~~) all paid agency employees (~~(who may have unsupervised access to)~~) and any other paid adults working at your facility, including those not directly working with children complete a FBI fingerprint check and a child abuse and neglect history check of every state the individual has lived in the preceding five years before the background check application.

(4) You must ensure that agency volunteers or interns that have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check.

(5) You must ensure that (~~(no)~~) all employees, volunteers, or subcontractors (~~(has unsupervised access to children)~~) meet the requirements in chapters 110-04 and 110-05 WAC. An individual is not authorized to work in the facility until you are notified by (~~(children's administration)~~) the licensing division that a background check was completed that qualifies the individual to have unsupervised access. If you have both a license issued by (~~(DLR)~~) DCYF licensing division and a contract with the department you must adhere to the most stringent background check requirement.

### WSR 19-04-037

#### EMERGENCY RULES

#### DEPARTMENT OF

#### CHILDREN, YOUTH, AND FAMILIES

[Filed January 28, 2019, 3:44 p.m., effective January 28, 2019, 3:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Implement the federal requirement of second-tier eligibility (the flexibility at reapplication for working connections child care benefits to accommodate modest increase in family income eligibility that reasonably allows the family to continue accessing child care services without unnecessary disruption when the family is otherwise ineligible because the family income exceeds the state threshold of eighty-five percent of the state median income[]).

Citation of Rules Affected by this Order: Amending WAC 110-15-0109 Reapplication.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065; chapter 43.216 RCW.

Other Authority: 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline

for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Continued receipt of federal funds for working connections child care is conditioned on the department of children, youth, and families, by October 1, 2018, establishing preservice and training requirements for family, friend, and neighbor care providers, health and safety activities and practices during care, and the consequences of noncompliance.

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

Number of Sections Adopted at the Request of a Non-governmental 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: January 28, 2019.

Brenda Villarreal  
Rules and Policies Administrator

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

**WAC 110-15-0109 Reapplication.** (1) (~~(If a consumer wants to receive To request WCCC benefits be continued uninterrupted~~) (~~(child care benefits for another)~~) beyond the consumer's current eligibility period, the consumer must reapply for WCCC benefits with DSHS on or before the end of the current eligibility period. (~~(To determine if a consumer is eligible, DSHS:))~~)

(2) Determination of the consumer's eligibility to receive uninterrupted WCCC benefits beyond the consumer's current eligibility period will be made pursuant to the eligibility rules contained in this chapter.

(a) (~~(Requests reapplication information))~~) A consumer who reapplies on or before the end date of the (~~(consumer's))~~) current WCCC eligibility period may receive continued uninterrupted benefits through second tier eligibility if the (~~(; and~~)

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) Effective October 1, 2016, if a) consumer's household has countable income greater than two hundred percent (~~(of the federal poverty guidelines (FPG))~~) but less than two

hundred twenty percent of the federal poverty guidelines ((FPG, the consumer may be eligible for a three-month eligibility period call Income Phase-Out. In determining eligibility for the Income Phase-Out period, the following rules apply:)) (FPG).

~~((a) All countable income must be)) (i) If the countable income is equal to or greater than ((two hundred percent of the FPG and less than)) two hundred twenty percent ((of the FPG. If the countable income is equal to or greater than two hundred twenty percent of the)) FPG, ((DSHS denies)) the reapplication(;) will be denied.~~

~~((DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;~~

~~(c) There is no break between the twelve-month eligibility period and the Income Phase-Out period;~~

~~(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;~~

~~(e) DSHS certifies the consumer for a three-month eligibility period;~~

~~(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month Income Phase-Out period; and~~

~~(g) The consumer will not be eligible for a second, back-to-back Income Phase-Out period if the countable income of the consumer's household remains equal to or greater than two hundred percent of the FPG and less than two hundred twenty percent of the FPG at the end of the first three-month Income Phase-Out period.~~

~~(4) If DSHS determines that a consumer is eligible for WCCC benefits based on reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.))~~

(ii) The copayment for a second tier eligible consumer will be determined at two hundred percent of the FPG of countable household income.

~~((5) When)) (3) If a consumer submits a reapplication after the last day of the current eligibility period and meets all WCCC eligibility requirements, the consumer's benefits will begin:~~

~~(a) On the date ((that)) the consumer's reapplication is entered into DSHS's automated system or the date the consumer's reapplication is date-stamped as received ((in DSHS's community service office or entered into the)) by DSHS, ((automated system,)) whichever date is earlier;~~

~~(b) When the consumer is working or participating in an approved activity; and~~

~~(c) The consumer's child is ((being cared for by an eligible WCCC)) receiving care from an approved provider.~~

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**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.

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

**WSR 19-04-057**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 19-18—Filed January 30, 2019, 1:53 p.m., effective February 1, 2019, 6:00 a.m.]

Effective Date of Rule: February 1, 2019, 6:00 a.m.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000A; and amending WAC 220-359-020.

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

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

Reasons for this Finding: This rule is consistent with actions of Columbia River Compact on January 29, 2019. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

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

Number of Sections Adopted at the Request of a Non-governmental 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: January 30, 2019.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000B Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

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

(a) Season: 6 AM Friday, February 1, 2019 to 6 PM Wednesday, February 13, 2019

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be sold or kept for subsistence purposes. Sturgeon within the legal size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open area of the gillnet fishery. Fish landed during the open periods are allowed to be sold after the period concludes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: 6 AM Friday, February 1, 2019 to 6 PM Thursday, March 21, 2019.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes. Further, sturgeon within the legal size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery. Fish landed during the open periods are allowed to be sold after the period concludes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. February 1, 2019:

WAC 220-359-02000A Columbia River salmon seasons above Bonneville Dam. (18-296)

#### **WSR 19-04-059 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 19-20—Filed January 30, 2019, 1:55 p.m., effective January 30, 2019, 1:55 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Amending WAC 220-358-030.

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

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

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

Reasons for this Finding: Sets the 2019 winter, spring, and summer select area commercial seasons. Impacts to non-local stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. 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 29, 2019. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement. Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, 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 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: January 30, 2019.

Kelly Susewind  
Director

### NEW SECTION

**WAC 220-358-03000X Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

#### **(1) Tongue Point/South Channel**

##### **(a) Dates:**

##### Tongue Point and South Channel open:

##### Winter Season:

Monday, Wednesday, and Thursday nights (7 PM to 7 AM) from February 4 through February 28,

Monday and Thursday nights (7 PM to 7 AM) from March 4 through March 8, and

Monday night March 11 from 10 PM to 2 AM (4 hours).

##### Spring/Summer Season:

Thursday night April 18 from 7 PM to 11 PM (4 hours),

Tuesday night April 23 from 10 PM to 2 AM (4 hours),

Friday April 26 from midnight to 4 AM (4 hours), and

Monday and Thursday nights (7 PM to 7 AM) from April 29 through May 29

##### South Channel open:

##### Winter Season:

Monday and Thursday nights (7 PM to 7 AM) from March 14-22,

Monday night (11 PM to 3 AM) March 25,

Friday (2 AM - 6 AM) March 29,

Monday (6 PM - 10 PM) April 1,

Thursday night April 4 from 8 PM to midnight (4 hours),

Monday night April 8 from 10 PM to 2 AM (4 hours),

and

Friday April 12 from midnight to 4 AM (4 hours)

##### **(b) Area:**

The Tongue Point Winter-Spring Subarea is defined as waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad

bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

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

**(c) Gear:** Gillnets.

Winter season: 7-inch minimum mesh size restriction

Spring and Summer seasons: 9 3/4-inch maximum mesh size restriction

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

In the Tongue Point winter-spring subarea the lead line weight may not exceed two pounds per any one fathom;

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

Nets not specifically authorized for use may be onboard a vessel if properly stored, however, unstored gillnets legal for use in South Channel may be onboard. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(d) Allowable sales: Salmon (except Chum) and shad. Retention and sale of sturgeon is prohibited

**(e) Miscellaneous:**

Permanent regulations including rules related to transportation and lighted buoys remain in effect.

24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-315.

Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

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

**(a) Dates:**

Winter Season:

Monday, Wednesday, and Thursday nights (7 PM to 7 AM) from February 4 through March 22,

Monday night March 25 from 11 PM to 3 AM (4 hours),

Friday March 29 from 2 AM to 6 AM (4 hours), and

Monday night April 1 from 6 PM to 10 PM (4 hours).

Spring Season:

Tuesday and Thursday nights (7 PM to 7 AM) from April 18-26, and

Monday, Wednesday, and Thursday nights (7 PM to 7 AM) from April 29 through May 29.

Blind Slough only

Thursday night April 4 from 8 PM to midnight (4 hours),

Monday night April 8 from 10 PM to 2 AM (4 hours), and

Friday April 12 from midnight to 4 AM (4 hours).

**(b) Area:**

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

The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

Prior to May 6, the downstream (western) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

**(c) Gear:** Gillnets.

Winter season: 7-inch minimum mesh size restriction.

Spring and Summer seasons: 9 3/4-inch maximum mesh size restriction.

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

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

(d) **Miscellaneous:** Permanent transportation rules in effect. In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) **Allowable Possession:** Salmon (except chum) and shad. Retention and sale of sturgeon is prohibited.

(4) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-352-315)). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries.

(5) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-030(2)).

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

**Reviser's note:** The typographical 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.

**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.

**WSR 19-04-063**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 19-19—Filed January 31, 2019, 11:37 a.m., effective January 31, 2019, 11:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational salmon rules for Puget Sound.

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

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

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

Reasons for this Finding: This emergency rule is needed to reduce the salmon daily limit in Catch Record Areas 8-1 and 8-2. Based on current catch estimates there is not sufficient salmon available in the preseason guideline to maintain a fishery through the planned season. A daily limit of one salmon will increase the potential of the winter fishery to remain open for the entire 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: January 30, 2019.

Kelly Susewind  
 Director

**NEW SECTION**

**WAC 220-313-06000X Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 220-313-060, the following rules apply effective immediately:

1. Catch Record Card Area 8-1, effective February 2 through April 30, 2019:
  - a. Daily limit one salmon.
  - b. Release coho and wild Chinook.

2. Catch Record Card Area 8-2, effective February 2 through April 30, 2019:
  - a. Daily limit one salmon.
  - b. Release coho and wild Chinook.

3. Catch Record Card Area 10 except Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier, effective immediately through March 31, 2019: Closed to fishing for or retaining salmon.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-313-06000W Puget Sound salmon—Saltwater seasons and daily limits. (19-13)

The following section of the Washington Administrative Code is repealed effective May 1, 2019:

WAC 220-313-06000X Puget Sound salmon—Saltwater seasons and daily limits.

**WSR 19-04-067**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed January 31, 2019, 2:23 p.m., effective February 1, 2019]

Effective Date of Rule: February 1, 2019.

Purpose: Increase child care centers' and seasonal day camps' working connections child care base rates beginning February 1, 2019.

Citation of Rules Affected by this Order: Repealing WAC 110-15-2401, 110-15-2410, 110-15-2420, 110-15-2426, 110-15-2430, 110-15-2435, 110-15-2440, 110-15-2445, 110-15-2450, 110-15-2455, 110-15-2460 and 110-15-2465; and amending WAC 110-15-0200.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065; chapter 43.216 RCW.

Other Authority: Consolidated Appropriations Act of 2018 (Public Law 115-141).

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

Reasons for this Finding: The federal child care development fund requires states to maintain the level of subsidy needed to ensure that (1) providers can afford the cost of fully implementing high quality care and (2) ensure all families have equal access to child care.

An additional federal fiscal year 2018 discretionary funding appropriation is available to Washington state February 1, 2019. Because the state is under corrective action to improve equal access for all families, centers' rates must be raised February 1 rather than wait the approximately six months needed for a 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 31, 2019.

Brenda Villarreal  
Rules Coordinator

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

**WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and ~~(DCYF)~~ DCYF contracted seasonal day camps.** (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or ~~(DCYF)~~ DCYF contracted seasonal day camp:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table:

|                |          | Infants<br>(One month - 11 mos.) | Toddlers<br>(12 - 29 mos.) | Preschool<br>(30 mos. - 6 yrs<br>not attending<br>kindergarten<br>or school) | School-age<br>(5 - 12 yrs attending<br>kindergarten or school) |
|----------------|----------|----------------------------------|----------------------------|--|--|
| Region 1       | Full-Day | <del>\$(34.03)</del> 35.29       | <del>\$(28.62)</del> 32.44 | <del>\$(27.03)</del> 30.53   | <del>\$(25.46)</del> 29.41                                     |
|                | Half-Day | <del>\$(17.02)</del> 17.65       | <del>\$(14.31)</del> 16.22 | <del>\$(13.52)</del> 15.26   | <del>\$(12.73)</del> 14.71                                     |
| Spokane County | Full-Day | <del>\$(34.81)</del> 45.45       | <del>\$(29.28)</del> 38.77 | <del>\$(27.67)</del> 35.65   | \$26.05  |
|                | Half-Day | <del>\$(17.41)</del> 22.73       | <del>\$(14.64)</del> 19.39 | <del>\$(13.84)</del> 17.83   | \$13.03  |
| Region 2       | Full-Day | <del>\$(34.39)</del> 39.44       | <del>\$(28.68)</del> 31.62 | <del>\$(26.61)</del> 30.44   | \$23.53  |
|                | Half-Day | <del>\$(17.20)</del> 19.72       | <del>\$(14.34)</del> 15.81 | <del>\$(13.31)</del> 15.22   | \$11.77  |
| Region 3       | Full-Day | <del>\$(45.50)</del> 57.84       | <del>\$(37.93)</del> 49.47 | <del>\$(32.78)</del> 42.34   | \$31.82  |
|                | Half-Day | <del>\$(22.75)</del> 28.92       | <del>\$(18.97)</del> 24.73 | <del>\$(16.39)</del> 21.17   | \$15.91  |
| Region 4       | Full-Day | <del>\$(52.94)</del> 68.98       | <del>\$(44.20)</del> 59.59 | <del>\$(37.10)</del> 55.57   | \$33.41  |
|                | Half-Day | <del>\$(26.47)</del> 34.49       | <del>\$(22.10)</del> 29.80 | <del>\$(18.55)</del> 27.79   | \$16.71  |
| Region 5       | Full-Day | <del>\$(38.82)</del> 48.86       | <del>\$(33.41)</del> 40.33 | <del>\$(29.40)</del> 35.47   | \$26.12  |
|                | Half-Day | <del>\$(19.41)</del> 24.43       | <del>\$(16.71)</del> 20.16 | <del>\$(14.70)</del> 17.74   | \$13.06  |
| Region 6       | Full-Day | <del>\$(38.18)</del> 46.39       | <del>\$(32.78)</del> 39.22 | <del>\$(28.62)</del> 35.29   | \$28.01  |
|                | Half-Day | <del>\$(19.09)</del> 23.20       | <del>\$(16.39)</del> 19.61 | <del>\$(14.31)</del> 17.65   | \$14.01  |

(Chart effective ~~\$(09/01/17)~~ 02/01/2019)

- (i) Centers in Clark County are paid Region 3 rates.
- (ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center ~~(WAC 170-295-0010 and 170-295-0050 allow)~~ WACs 110-300A-0010 and 110-300A-0050 allow providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs

requirement according to WAC ~~\$(170-290-0220)~~ 110-15-0220.

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

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

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 110-15-2401 Eligible consumers.
- WAC 110-15-2410 Application for early head start-child care partnership slots.
- WAC 110-15-2420 Copay for early head start-child care partnership slots.



- WAC 110-15-2426 Eligibility period for early head start-child care partnership slots.
- WAC 110-15-2430 Eligible early head start-child care partnership slots providers.
- WAC 110-15-2435 Subsidy payments for early head start-child care partnership slots providers.
- WAC 110-15-2440 Early achievers payments for partnership slots providers.
- WAC 110-15-2445 Reapplication for early head start-child care partnership slots.
- WAC 110-15-2450 Deenrollment process for early head start-child care partnership slots providers.
- WAC 110-15-2455 Payment discrepancies for early head start-child care partnership slots consumers.
- WAC 110-15-2460 Payment discrepancies for early head start-child care partnership slots providers.
- WAC 110-15-2465 Administrative hearings for early head start-child care partnership slots.

Number of Sections Adopted at the Request of a Non-governmental 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: February 1, 2019.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-330-11000G Clams other than razor clams, mussels—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-110, effective February 4, 2019 Dosewallips State Park, as defined by boundary markers and signs posted on the beach, is closed until further notice.

#### **WSR 19-04-077 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 19-21—Filed February 1, 2019, 3:06 p.m., effective February 4, 2019]

Effective Date of Rule: February 4, 2019.

Purpose: Amend recreational clam rules in Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-330-110.

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

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

Reasons for this Finding: This emergency rule is necessary to close the clam season at Dosewallips State Park. Surveys indicate the clam population at this beach has declined while recreational harvesting effort has increased, and the state's clam share was exceeded in 2018. The 2019 state clam share will only allow for a short, late summer clam season. The oyster season on this beach will remain open year-round. 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.

#### **WSR 19-04-078**

#### **EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 19-22—Filed February 1, 2019, 3:12 p.m., effective February 1, 2019, 3:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for North Fork Stillaguamish River.

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

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

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

Reasons for this Finding: This rule is needed to return the North Fork Stillaguamish River to permanent rule. The Whitehorse Hatchery has completed broodstock collection for early winter steelhead for the season. This rule change gives anglers the opportunity to harvest any remaining hatchery 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: February 1, 2019.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000I Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-312-040, effective immediately through February 15, 2019:

Wallace River (Snohomish Co.) from 200 feet downstream to 200 feet upstream of the water intake of the salmon hatchery:

- (a) It is unlawful to fish from any floating device.
- (b) Game fish: Statewide minimum length/daily limit,

except:

- (i) Cutthroat trout and wild rainbow trout: minimum length 14 inches.
- (ii) Dolly varden/bull trout: minimum length 20 inches as part of the trout limit.

**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 immediately:

WAC 220-312-04000G Puget Sound—Freshwater exceptions to statewide rules. (19-08)

The following section of the Washington Administrative Code is repealed effective February 16, 2019:

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