

WSR 20-05-001
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed February 5, 2020, 12:12 p.m., effective February 5, 2020, 12:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-35 WAC, Vapor products, the Washington state liquor and cannabis board (board) has adopted emergency rules to create WAC 314-35-090 and 314-35-095 that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of chapter 246-80 WAC concerning the prohibition of the use of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 19-21-182 on October 23, 2019.

Citation of Rules Affected by this Order: New WAC 314-35-090 and 314-35-095.

Statutory Authority for Adoption: Chapter 70.345 RCW.

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

Reasons for this Finding: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-182 on October 23, 2019, the reasons supporting the necessity of this rule are modified as follows:

On November 20, 2019, the Washington state board of health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct

evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

These emergency rules serve a two-pronged purpose:

- Allow the board to serve an order of summary license suspension after a preliminary staff investigation indicates that a vapor product licensee has violated SBOH rules pertaining to the use of vitamin E acetate as described in chapter 246-80 WAC, and that immediate cessation of licensed activities is necessary for the presentation [preservation] of public health and welfare; and
- Provide a framework and process for an affected vapor product licensee to petition the board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

The SBOH prohibition of vitamin E acetate (WAC 246-80-021(2)) provides, "No person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service."

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate readoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of SBOH rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The board has the authority and responsibility to adopt rules for the preservation of public health. These rules may be extended, rescinded or considered for inclusion in adopted rules at a later date as appropriate.

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 2, Amended 0, Repealed 0.

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

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

Date Adopted: February 5, 2020.

Jane Rushford
Chair

NEW SECTION

WAC 314-35-090 Summary license suspension. (1)

The board may serve an order of summary suspension of any license under this chapter after the board's enforcement division has:

(a) Completed a preliminary staff investigation of a violation of state board of health rules, chapter 246-80 WAC; and

(b) Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this section is effective twenty-four hours after personal service of the summary suspension order on the licensee or employee thereof, unless the licensee becomes compliant as provided in the order before the expiration of the twenty-four hour period.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing will be held within ninety calendar days of the effective date of the summary suspension ordered by the board. The ninety day period may be extended for good cause.

NEW SECTION

WAC 314-35-095 Petition for stay. (1) When the board summarily suspends a license under WAC 314-35-090, an affected licensee may petition the board for a stay of suspension. A petition for a stay of suspension must be received by the board within ten calendar days of service of the summary suspension order on the licensee. The petition for stay must clearly describe the basis for the stay.

(2) A hearing will be held before an administrative law judge within fourteen calendar days of receipt of a timely petition for stay. The hearing is limited to consideration of whether a stay should be granted, or whether the terms of the suspension will be modified to allow the conduct of limited activities under current licenses.

(3) Any hearing conducted under subsection (2) of this section will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing must consist of the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief

adjudicative proceeding. The licensee must demonstrate by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, income alone from licensed activities is not deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay is effective immediately upon service unless another date is specified in the order.

WSR 20-05-002

EMERGENCY RULES LIQUOR AND CANNABIS BOARD

[Filed February 5, 2020, 12:16 p.m., effective February 5, 2020, 12:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-077 Marijuana processor license—Privileges, requirements and fees, the Washington state liquor and cannabis board (board) has adopted an emergency rule as WAC 314-55-077(13) that allows the board to take disciplinary action against any licensed marijuana processor failing to comply with the provisions of chapter 246-80 WAC concerning prohibition of the use of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 19-21-180 on October 23, 2019.

Citation of Rules Affected by this Order: Amending WAC 314-55-077.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

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

Reasons for this Finding: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-180 on October 23, 2019, the reasons supporting the necessity of this rule are modified as follows:

On November 20, 2019, the Washington state board of health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners

began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.

- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

Specifically, the SBOH emergency rule provides that, "...[n]o person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service."

This emergency rule allows the board to take disciplinary action against any licensed marijuana processor that fails to comply with the provisions of the SBOH emergency rule described in chapter 246-80 WAC prohibiting the use of vitamin E acetate, and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-077.

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of SBOH rule described in

chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The board has the authority and responsibility to adopt rules for the preservation of public health.

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

Date Adopted: February 5, 2020.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 18-22-055 [20-01-172], filed 10/31/18 [12/18/19], effective 12/1/18 [1/1/20])

WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees. (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) Application and license fees.

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

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The WSLCB may reopen the marijuana processor application window at subsequent times when the WSLCB deems necessary.

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

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the WSLCB or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal

business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5)(a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(6) Recipes, product, packaging, and labeling approval.

(a) A marijuana processor licensee must obtain label and packaging approval from the WSLCB for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the WSLCB for approval. More information on the product, packaging, and label review process is available on the WLSLB's website at www.lcb.wa.gov.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the WSLCB. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the WSLCB or its designee.

(c) If the WSLCB denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must:

(a) Be homogenized to ensure uniform disbursement of cannabinoids throughout the product; and

(b) Until January 1, 2019, prominently display on the label "This product contains marijuana."

(9) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana. Marijuana-infused products that require cooking or baking by the consumer are prohibited. Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lol-

lipops, cotton candy, or brightly colored products, are prohibited.

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

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

(i) Any food that has to be acidified to make it shelf stable;

(ii) Food items made shelf stable by canning or retorting;

(iii) Fruit or vegetable juices (this does not include shelf stable concentrates);

(iv) Fruit or vegetable butters;

(v) Pumpkin pies, custard pies, or any pies that contain egg;

(vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(vii) Dried or cured meats.

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

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

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

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

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

(11) Processing service arrangements. A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a

violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(12) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

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

(13) The board may take disciplinary action against any processor that fails to comply with the provisions of chapter 246-80 WAC.

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

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 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 20-05-003
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed February 5, 2020, 12:18 p.m., effective February 5, 2020, 12:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-079 Marijuana retailer license—Privileges, requirements and fees. The Washington state

liquor and cannabis board (board) has adopted an emergency rule as WAC 314-55-079(14) that allows the board to take disciplinary action against any licensed marijuana retailer failing to comply with the provisions of chapter 246-80 WAC concerning prohibition of the use of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 19-21-181 on October 23, 2019.

Citation of Rules Affected by this Order: Amending WAC 314-55-079.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

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

Reasons for this Finding: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-181 on October 23, 2019, the reasons supporting the necessity of this rule are modified as follows:

On November 20, 2019, the Washington state board of health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.
- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. None of a range of

other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

Specifically, the SBOH emergency rule provides, in relevant part that, "...[n]o person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service."

This emergency rule allows the board to take disciplinary action against any licensed marijuana processor that fails to comply with the provisions of the SBOH emergency rule described in chapter 246-80 WAC prohibiting the use of vitamin E acetate, and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-079.

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of SBOH rule described in chapter 246-80 WAC, prohibiting the use of vitamin E acetate. The board has the authority and responsibility to adopt rules for the preservation of public health.

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

Date Adopted: February 5, 2020.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-079 Marijuana retailer license—Privileges, requirements, and fees. (1) A marijuana retailer license allows the licensee to sell only useable marijuana, marijuana concentrates, marijuana-infused products, marijuana paraphernalia, and lockable boxes to store marijuana at retail in licensed retail outlets to persons twenty-one years of age and older, except as allowed for persons under twenty-one years of age consistent with RCW 69.50.357 and WAC 314-55-080.

(2) The WSLCB may accept applications for marijuana retail licenses at time frames published on its website at www.lcb.wa.gov. Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the WSLCB will determine the maximum number of marijuana retail locations per county.

(a) The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(b) The number of retail licenses determined by the board can be found on the WSLCB website at www.lcb.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than five retail marijuana licenses.

(4) Application and license fees.

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

(b) The annual fee for issuance and renewal of a marijuana retailer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(5) Internet sales and delivery of product to customers are prohibited.

(6) Sales of marijuana-infused products not permissible under WAC 314-55-077 are prohibited.

(7) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(8) All marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(9) A marijuana retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed marijuana producer, processor, or retailer.

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

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

(12) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(13) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097.

(14) The board may take disciplinary action against any marijuana retailer that fails to comply with the provisions of chapter 246-80 WAC.

WSR 20-05-004
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed February 5, 2020, 12:21 p.m., effective February 5, 2020, 12:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting, the Washington state liquor and cannabis board (board) has adopted an emergency rule to create WAC 314-55-1055 Ingredient disclosure, requiring the disclosure of all ingredients used in the production of marijuana concentrates for inhalation and marijuana extracts for inhalation. This filing supersedes and replaces emergency rules filed as WSR 19-21-100 on October 16, 2019.

Citation of Rules Affected by this Order: New WAC 314-55-1055.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

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

Reasons for this Finding: While the provisions of this emergency rule have not changed from the previous emergency rule filed as WSR 19-21-100 on October 16, 2019, the reasons supporting the necessity for this rule are modified as follows:

On November 20, 2019, the Washington state board of health (SBOH) found that the outbreak of lung disease continues to grow, and that the adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate was necessary for the preservation of the public health, safety, and general welfare. The SBOH relied on the following to support its finding:

- In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of lung injury associated with e-cigarette product use, or vaping.

- In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak.
- As of November 13, 2019, there have been two thousand one hundred seventy-two confirmed cases reported across forty-nine states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including forty-two deaths confirmed in twenty-four states. Fourteen cases of lung injury have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the CDC conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that, until the relationship of vitamin E acetate and lung health is better characterized, it is important that vitamin E acetate not be added to vapor products.

Specifically, the SBOH emergency rule provides, in relevant part that, "...[n]o person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service."

This emergency rule requires that marijuana licensees disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin. Disclosure must be made to the board on forms provided by the board, and submitted to an email address or other platform provided or maintained by the board.

Because the outbreak of lung disease continues to grow, the immediate adoption of rule that establishes provisions for both the enforcement of chapter 246-80 WAC, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of rule requiring disclosure of compounds and other substances, including but not

limited to vitamin E acetate added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation is necessary for the preservation of public health, safety and general welfare. Adoption of this emergency rule continues to assist public health officials in isolating the compounds and products that may be connected to the growing outbreak of lung disease.

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 1, Amended 0, Repealed 0.

Date Adopted: February 5, 2020.

Jane Rushford
Chair

NEW SECTION

WAC 314-55-1055 Ingredient disclosure. (1) All licensed marijuana processors and producers must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation.

(2) All chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, must be disclosed to the board as follows:

(a) On a form provided by the board and stored by the licensee, either electronically or in hard copy, and made available for inspection if requested by an employee of the board; and

(b) In a manner directed by the board including, but not limited to, submission to an email address or other online platform provided and maintained by the board.

(3) The complete list of all chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, that is required under subsection (2) of this section must be kept and maintained, consistent with recordkeeping requirements described in WAC 314-55-087, at the facility in which the products are processed. The list must be updated whenever there is any change in product composition.

WSR 20-05-021 EMERGENCY RULES HEALTH CARE AUTHORITY

[Filed February 7, 2020, 11:40 a.m., effective February 7, 2020, 11:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making is required to comply with the requirements in 2ESHB 1388 which changed the designation of the state behavioral health services, effective July 1, 2018. The single bed certification rules were previously filed under preproposal statement of inquiry WSR 18-14-080 and Emergency rule-making order WSR 19-13-057, as WAC 182-538D-0526.

The rule making under WSR 18-14-080 was finalized under WSR 19-24-063. Rule making for single bed certification will be continued through a separate rule-making progress [process] as the agency has additional work to do to develop the program. Single bed certification has also been renumbered from WAC 182-538D-0526 to WAC 182-100-0200 to reflect that it is not solely a service under medicaid.

Since the emergency rule making filed under WSR 19-13-057, the agency removed behavioral health organizations from the text and replaced this with behavioral health administrative services organizations to implement 2ESSB 5432, which directs the agency to fully implement behavioral health integration for January 1, 2020. The agency has also continued to hold workgroup discussions to develop the policies surrounding single bed certification.

Citation of Rules Affected by this Order: New WAC 182-100-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 2ESHB 1388 (chapter 201, Laws of 2018).

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: 2ESHB 1388 directs the transfer of the behavioral health authority to the health care authority, effective July 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 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 0, 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 1, Amended 0, Repealed 0.

Date Adopted: February 7, 2020.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-100-0200 Single bed certification. At the discretion of the health care authority, an exception may be granted to allow timely and appropriate treatment in a facility that is not certified under chapter 246-341 WAC to a person on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment to a person on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to a person who has been revoked from a less restrictive alternative order or conditional release. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under chapter 246-341 WAC until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The behavioral health administrative services organization (BH-ASO) or a designee must submit a written request for a single bed certification to the health care authority. In the case of a child, the facility must submit the written request to the health care authority. The request must be submitted and approved by the health care authority for a facility to accept a person for timely and appropriate treatment under this section. If the health care authority has assumed the duties assigned to a nonparticipating BH-ASO, an entity designated by the health care authority will perform the functions described in this section.

(2) A single bed certification may be issued to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for a person:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the person for whom the single bed certification is sought; and

(b) The request for single bed certification describes why the person meets at least one of the following criteria:

(i) The person is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the person's individual treatment needs;

(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or

(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, or a hospital that is willing and able to provide timely and appropriate mental health treatment, or a psychiatric hospital, and the single bed certification will apply only to that facility.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certification, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional,

as defined in RCW 71.05.020 or WAC 182-538D-0200, and licensed physicians are available for consultation and communication with both the person and the direct patient care staff;

(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the person. If the person is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, or collaboration with members of the person's support system as identified by the person.

(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, has had contact with each involuntarily detained person at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the person is appropriate for release from involuntary commitment to accept treatment on a voluntary basis.

(c) Have standards for administration and monitoring of medication, including psychiatric medications. A person has a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a person requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section, a single bed certification may be issued to that facility for the person as follows:

(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter, a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section;

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the BH-ASO assigns a mental health professional to provide the person appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the person is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the person's mental health treatment needs until the person is medically stable and the BH-ASO or a designee identifies an appropriate facility for the person that is one of the following:

(A) The hospital providing services;

(B) A facility that is certified as an evaluation and treatment (E&T) facility; or

(C) A facility that can meet the person's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated, the requirements in (c) of this subsection do not apply. When the person is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.

(5) The health care authority makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal or state law.

(6) A person who receives services under a single bed certification under this section must be transferred:

(a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment; or

(b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.

(7) The health care authority may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the health care authority determines that the violation places people in imminent jeopardy, immediate revocation of this exception can occur.

(8) The BH-ASO retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(9) Neither a person nor a facility has fair hearing rights as defined under chapter 182-526 WAC regarding single bed certification decisions by the health care authority staff.

WSR 20-05-023

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-22—Filed February 7, 2020, 2:57 p.m., effective February 8, 2020]

Effective Date of Rule: February 8, 2020.

Purpose: Amend commercial sea urchin rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000V; and amending WAC 220-340-750.

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 closes harvest of red sea urchins in Sea Urchin District 1 and Catch Reporting Areas 21A, 21B, 22A, 22B of Sea Urchin District 2, because the quota for red sea urchin in these areas has been

reached. Harvestable surpluses of sea urchin exist in the districts specified. 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: February 7, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000W Commercial sea urchin fishery. Notwithstanding the provisions of WAC 220-340-750, effective February 8, 2020, until further notice:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1; Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, in District 2; District 6; and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(4) The maximum cumulative landings for red sea urchin and green sea urchin for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective February 8, 2020:

WAC 220-340-75000V Commercial sea urchin fisheries.
(20-13)

WSR 20-05-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-24—Filed February 10, 2020, 5:13 p.m., effective February 14, 2020, 8:00 a.m.]

Effective Date of Rule: February 14, 2020, 8:00 a.m.

Purpose: Amend recreational smelt rules.

Citation of Rules Affected by this Order: Repealing WAC 220-315-03000A; and amending WAC 220-315-030.

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

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

Reasons for this Finding: This rule sets a limited Columbia River recreational fishery for eulachon smelt. The regulation is consistent with a conservative research-level fishery, reduced from the level-one fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. The expected return of eulachon to the Columbia River in 2020 is expected to be similar in magnitude to the run in 2019. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. NOAA Fisheries concurs that a limited fishery is consistent with recovery of eulachon smelt. There is insufficient time to adopt permanent regulations.

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: February 10, 2020.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-315-03000A Smelt—Areas and seasons
Notwithstanding the provisions of WAC 220-315-030, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: Friday February 14, 2020. 8:00 a.m. to 1:00 p.m. (5-hour period).

Open Area: Cowlitz River (bank only) from the HWY 432 Bridge upstream to the Al Helenberg Memorial Boat Ramp located approximately 1,300 feet upstream of the HWY 411/A Street Bridge in Castle Rock.

Daily Limit: 10 pounds. Possession limit equal to one daily limit.

Gear: Dip net.

REPEALER

The following section of the Washington Administrative Code is repealed effective 1:01 p.m. February 14, 2020:

WAC 220-315-03000A Smelt—Areas and seasons

WSR 20-05-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-25—Filed February 11, 2020, 4:09 p.m., effective February 12, 2020, 6:00 a.m.]

Effective Date of Rule: February 12, 2020, 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 220-359-02000T; 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 sets the first treaty winter commercial fishery in the John Day Pool. This rule is consistent with actions of the Columbia River Compact on February 11, 2020. 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: February 11, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000U 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 1H (The John Day pool)

(a) Season: 6 AM Wednesday, February 12 to 6 PM Monday, February 17, 2020

(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 John Day pool may be sold or kept for subsistence purposes.

(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 Saturday, February 1, 2020 to 6 PM Saturday, March 21, 2020.

(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. 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.

(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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000T Columbia River salmon seasons above Bonneville Dam. (20-16)

WSR 20-05-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-26—Filed February 11, 2020, 4:15 p.m., effective February 14, 2020]

Effective Date of Rule: February 14, 2020.

Purpose: Amends recreational fishing rules for the Columbia River.

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

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

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

Reasons for this Finding: This rule is needed to close white sturgeon retention in Bonneville and The Dalles pools. At current rates it is likely that if retention is allowed in Bonneville Pool after February 13, and The Dalles Pool after February 17, that harvest guidelines will be exceeded. This measure is necessary to minimize the risk of exceeding the catch guidelines and over-harvesting the population. This action is consistent with decisions made by the states of Washington and Oregon on February 11, 2020.

This rule also carries forward existing emergency rules for the Columbia River and puts an effective end date on emergency sturgeon rules from Hwy 395 Bridge to Priest Rapids as those rules will become permanent effective March 9.

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: February 11, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia Notwithstanding the provisions of WAC 220-312-060:

(1) From Bonneville Dam to The Dalles Dam including adjacent tributaries: Effective February 14 through April 30, 2020: Retention of white sturgeon is prohibited.

(2) From The Dalles Dam to John Day Dam including adjacent tributaries: Effective February 18 April 30, 2020: Retention of white sturgeon is prohibited.

(3) From McNary Dam upstream to the Hwy. 395 Bridge (Pasco/Kennewick):

(a) Effective immediately through March 31, 2020: Closed to angling for and retention of steelhead.

(b) Effective immediately through March 8, 2020: Closed to retention of white sturgeon.

(4) From the Hwy. 395 Bridge (Pasco/Kennewick) to Old Hanford townsite powerline crossing:

(a) Effective immediately through April 15, 2020: Closed to angling for and retention of steelhead.

(b) Effective immediately through March 8, 2020: Closed to retention of white sturgeon.

(5) From the Old Hanford townsite powerline crossing to boundary markers 650 feet downstream of the fish ladders Priest Rapids Dam: Effective February 1, 2020 through March 8, 2020: Closed to retention of white sturgeon.

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 February 14, 2020:

WAC 220-312-06000E Freshwater exceptions to statewide rules—Columbia (20-11)

WSR 20-05-038
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed February 12, 2020, 9:25 a.m., effective February 12, 2020, 9:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Revise preemployment and volunteer background check requirements to implement the Family First Prevention Services Act (FFPSA) as it pertains to the department of children, youth, and families (DCYF)-licensed group care facilities. Specifically, require all employees working in DCYF-licensed group care facilities, including those not working directly with children, and volunteers who provide direct care to children in these facilities to undergo fingerprint-based background checks and out-of-state child abuse and neglect registry checks for every state of residence during the five years preceding the background check application.

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, 110-145-1305, 110-145-1325, 110-145-1330, 110-145-1400, and 110-145-1550.

Statutory Authority for Adoption: RCW 43.43.832, 74.13.031, and chapter 74.15 RCW.

Other Authority: P.L. 115-12.

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: DCYF must comply with the FFPSA in order to continue to receive Title IV-E appropriations, which fund the state's child welfare programs. Emergency rules were first adopted October 1, 2018, to comply with FFPSA while DCYF engaged in permanent rule making. Permanent rules have been adopted and will take effect March 9, 2020. These emergency rules are necessary for the state to remain compliant until then.

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 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: February 12, 2020.

Brenda Villarreal
Rules Coordinator

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 conducted 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 defini-

tions 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 ~~((~~ (H) department or child placing agency (CPA) approval of a person, foster home, or facility that ((does not legally need to be licensed, but wishes to have evidence that they met the minimum)) is exempt from licensing but meets the licensing requirements.

~~((2) 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:

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

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

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

~~((4))~~ (d) Up to ((twenty-one)) twenty-five 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.

"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 or certify 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, including the parents.

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, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

(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) Volunteer or participate as an intern in a home or facility that offers care to children; or

~~((f))~~ (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 children 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 chil-

dren. 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~~) have 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 (~~has~~) 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 your~~) 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 110-145-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social (~~and/or~~) and emotional condition.

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

(~~"CA" means children's administration.~~)

"Capacity" means the age range, gender, and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children (~~and/or~~) and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter (~~(388-145)~~) 110-145 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

(~~(1)~~) (a) Under eighteen years old;

(~~(2)~~) (b) Up to twenty-one years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to (~~his or her~~) their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

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

(~~(4)~~) (d) Up to twenty-one years of age with intellectual and developmental disabilities;

(~~(5)~~) (e) Up to (~~twenty-one~~) twenty-five years of age and under the custody of (~~the Washington state~~) juvenile (~~justice~~) rehabilitation (~~administration~~).

"Child placing agency" or "CPA" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four-hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family ~~((and/or))~~ or in need of emergency placement.

"CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

~~("DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.)~~

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department" or ~~((DSHS))~~ "DCYF" means the department of ~~((social and health services))~~ children, youth, and families.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care ~~((staff))~~" means ~~((persons who provide daily))~~ direct, hands-on personal care and supervision ~~((and direct care))~~ to group care children and youth.

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

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse ~~((and/or))~~ or neglect per RCW 74.15.020(d). ERCs may choose to be open up to twenty-four hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"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).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns, and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"LD" means the licensing division of DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of ~~((CA))~~ DCYF and the child's whereabouts are unknown ~~((and/or))~~, the child has left care without the permission of the child's caregiver or ~~((CA))~~ DCYF, or both. This does not include children in a dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

~~((1))~~ (a) A decision issued by an administrative law judge;

~~((2))~~ (b) A final determination, decision, or finding made by an agency following an investigation;

~~((3))~~ (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;

~~((4))~~ (d) A revocation, denial, or restriction placed on any professional license; or

~~((5))~~ (e) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or run-away youth in need of emergency sleeping arrangements.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staff" or "staff member" means a person who provides services for your facility and is paid by your facility. The definition of staff member includes paid interns.

"Staffed residential home" means a licensed facility that provides twenty-four-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

~~("Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.)~~

"Volunteer" means a person who provides ~~((direct care))~~ services for your facility without compensation~~((, for your facility))~~.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

~~"We, our, and us" refers to ((the department of social and health services, including DLR and DCFS))~~ DCYF and its staff.

"Young child" refers to a child age twelve months through eight years old.

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 ~~((division of licensed resources, children's administration))~~ DCYF LD.

(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))~~ paid by the facility per chapter ~~((388-06A))~~ 110-04 WAC.

(3) You must ensure that ~~((an))~~ all paid agency ~~((employee who may have unsupervised access to))~~ staff 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 in which the individual has lived in the preceding five years prior to conducting the background check.

(4) You must ensure that agency volunteers ~~((or interns that have lived outside of Washington state during any portion of the previous three years))~~ who provide direct care complete a FBI fingerprint check and a child abuse and neglect history check of every state in which the individual has lived in the preceding five years prior to conducting the background check.

(5) You must ensure that ~~((no employee,))~~ agency volunteers ((or subcontractor has unsupervised access to children until you are notified by children's administration that a background check was completed that qualifies the individual to have unsupervised access.)) who do not provide direct care and have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check.

(6) You must ensure all staff, volunteers, or subcontractors meet the requirements in chapter 110-04 WAC. An individual is not authorized to work in the facility until DCYF issues a background check clearance authorization for the individual.

(7) If you have both a license issued by ~~((DLR))~~ LD and a contract with the department, you must adhere to the most stringent background check requirement.

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

WAC 110-145-1330 How does the department determine my suitability to become a licensed provider or ~~((an employee, intern,))~~ a staff member or volunteer of a licensed provider? (1) The department determines your suitability as a licensed provider after receiving your application, background ~~((authorization(s)))~~ authorizations for those listed in WAC ~~((388-145-1325(2)))~~ 110-145-1325, and all required documentation outlined in this chapter.

(2) The department determines the suitability of a licensee, ~~((employee, intern))~~ staff member, or volunteer after receiving their background authorization referenced in subsection (1) ~~((above))~~ of this section.

(3) You, your ~~((employees, interns))~~ staff members, and volunteers must not have had a license or contract denied or revoked from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's safety, well-being and long-term stability.

(4) You, your ~~((employees, interns))~~ staff members, and volunteers must not have been found to have committed abuse or neglect of a child or vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(5) You must demonstrate that you, your ~~((employees, interns))~~ staff members, and volunteers have:

(a) The understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under your care; and

(b) The ability to furnish children with a nurturing, respectful, and supportive environment.

(6) At any time, we may require you, your ~~((employees, interns))~~ staff members, and volunteers to give us additional information. We may also require an evaluation of your facility or property, or of a staff ~~((person))~~ member or volunteer working for your facility or agency, by an evaluator we recommend. Any evaluation requested by the department will be at your expense. The evaluator must be given written permission to share information with us prior to and throughout the evaluation process.

(7) Any ~~((employee, intern,))~~ staff member or volunteer who is found to have misrepresented or provided fraudulent information may be disqualified.

(8) Before granting or renewing a license, your licensor will assess your ability to provide a safe environment for children and to provide the quality of care needed by children placed in your care. Your licensor will also determine that you meet training requirements.

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

WAC 110-145-1400 Must prospective and current ~~((employees,))~~ staff and volunteers~~((, interns, and subcontractors))~~ be disqualified from having access to the children in my facility? (1) The department must disqualify prospective and current ~~((employees,))~~ staff and volunteers~~((, interns, and subcontractors))~~ if they do not meet the regula-

tions of this chapter ~~((388-145-WAC))~~, or cannot have unsupervised access to children because of their background check as outlined in chapter ~~((388-06A))~~ 110-04 WAC.

(2) The department must disqualify prospective and current ~~((employees, interns))~~ staff and, volunteers, and subcontractors if they have had a negative action taken on a license or contract, or have had a license denied or revoked by an agency that regulates the care of children or vulnerable adults, unless the department determines that the individual does not pose a risk to a child's safety, well-being, and long-term stability.

(3) ~~((Applicant's, employees, interns,))~~ Applicants, staff and volunteers~~((, and subcontractors))~~ must demonstrate that they have the understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under their care.

(4) The department will notify the licensee ~~((if a))~~ when prospective ~~((or current employee, intern, volunteer, or subcontractor is))~~ staff and volunteers are disqualified from having unsupervised access to children. Hiring a person disqualified by ~~((DSSH))~~ DCYF or continuing to allow unsupervised access to children by a person disqualified by ~~((DSSH))~~ DCYF could also lead to denial, suspension, or revocation of your license issued under this chapter.

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

WAC 110-145-1550 What changes must I report to my licensor? ~~((+))~~ You must immediately report to your licensor changes in the original licensing application. You must report:

~~((+))~~ (1) Changes in your location, including address or phone number;

~~((+))~~ (2) Changes in your program description or population served, including the maximum number, age ranges, and sex of children you wish to serve;

~~((+))~~ (3) Changes in the structure of your facility or premises from events causing damage, such as a fire, or from remodeling;

~~((+))~~ (4) Additional staff~~((, employees, interns, contractors))~~ or volunteers~~((,))~~ who might have unsupervised contact with the children in care;

~~((+))~~ (5) Significant changes in the physical condition of you ~~((or))~~, your staff, or volunteers affecting the ability to provide care in your facility;

~~((+))~~ (6) Staff or volunteer arrests or convictions of which you are aware that occur between the date of your license and the expiration date of your license;

~~((+))~~ (7) Any staff changes including the executive director, program manager, or master's level consultants;

~~((+))~~ (8) Death, retirement, or incapacity of the person who holds the license;

~~((+))~~ (9) Changes in the name of your licensed corporation, or the name by which your facility is commonly known and/or your articles of incorporation and bylaws.

WSR 20-05-039
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed February 12, 2020, 9:25 a.m.]

The department of children, youth, and families rescinds WSR 20-04-033, filed January 28, 2020. Please contact Brenda Villarreal at 360-902-7956 if you have question[s] of [or] need anything further.

Brenda Villarreal
Rules Coordinator

WSR 20-05-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-27—Filed February 13, 2020, 4:28 p.m., effective February 17, 2020]

Effective Date of Rule: February 17, 2020.

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 2020 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 February 11, 2020. 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, 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: February 13, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000K 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

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 17 - Feb 28	Mon, Wed, Thu (nights)	7 pm - 7 am	6 nights
Mar 2 - Mar 6	Mon, Thu (nights)	7 pm - 7 am	2 nights
Apr-20	Mon (night)	6:00 pm - 10:00 pm	4 hrs
Apr-23	Thu (night)	7:30 pm - 11:30 pm	4 hrs
Apr 28 - May 1	Tue, Thur (night)	7 pm - 7 am	2 nights
May 4 - Jun 10	Mon, Wed, Thu (nights)	7pm - 7am	16 nights

(2) Tongue Point

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar-09	Mon (night)	7:30 pm - 11:30 pm	4 hrs
Mar 12 - Mar 13	Thu-Fri (night)	8:30 pm - 12:30 am	4 hrs
Mar-17	Tue (morning)	1:00 am - 5:00 am	4 hrs

(3) South Channel

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 9 - Mar 13	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Mar 16 - Mar 20	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
Mar 23 - Mar 27	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Mar 31	Tue (morning)	12:00 am - 4:00 am	4 hrs
Apr-03	Fri (morning)	3:30 am - 7:30 am	4 hrs
Apr-06	Mon (night)	7:00 pm - 11:00 pm	4 hrs
Apr 9 - Apr 10	Thu-Fri (night)	10:00 pm - 2:00 am	4 hrs
Apr-14	Tues (morning)	12:30 am - 4:30 am	4 hrs
Apr-17	Fri (morning)	4:30 am - 8:30 am	4 hrs

(a) 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.

For summer fisheries, the open waters include the entire Tongue Point Select Area as described in WAC 20-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to

the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott 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.

(b) Gear: Gillnets.

Winter season: 7-inch minimum mesh size restriction

Spring and Summer seasons: 93/4-inch maximum mesh size restriction

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

In the Tongue Point winter-spring subarea and the Tongue Point Select Area, 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.

(4) Blind Slough/Knappa Slough Select Area

Blind Slough and Knappa Slough

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 17 - Mar 24	Mon, Wed, Thu (nights)	7 pm - 7 am	16 nights
Apr 20 - Apr 24	Mon, Thu (nights)	7 pm - 7 am	2 nights
Apr 28 - May 1	Tue, Thu (nights)	7 pm - 7 am	2 nights
May 4 - Jun 10	Mon, Wed, Thu (nights)	7 pm - 7 am	16 nights

Blind Slough only

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 26 - Apr 17	Mon, Thu (nights)	7 pm - 7 am	12 hrs

Knappa Slough only

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 26 - Mar 27	Thu-Fri (night)	9:30 pm - 1:30 am	4 hrs
Mar-31	Tue (morning)	12:00 am - 4:00 am	4 hrs
Apr-03	Fri (morning)	3:30 am - 7:30 am	4 hrs
Apr-06	Mon (night)	7:00 pm - 11:00 pm	4 hrs
Apr 9 - Apr 10	Thu-Fri (night)	10:00 pm - 2 am	4 hrs
Apr-14	Tue (night)	12:30 am - 4:30 am	4 hrs
Apr-17	Fri (morning)	4:30 am - 8:30 am	4 hrs

(a) 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 2, 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.

(b) 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.

(c) 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.

(5) Allowable Sales: Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(6) 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. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

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

(8) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the

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

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

WSR 20-05-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-28—Filed February 13, 2020, 4:29 p.m., effective February 21, 2020, 8:00 a.m.]

Effective Date of Rule: February 21, 2020, 8:00 a.m.

Purpose: Amends coastal commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000Q and 220-340-45000X; and amending WAC 220-340-420 and 220-340-450.

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 the commercial crab fishery in the Makah Special Management Area. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area and language improves enforcement of pot limits. Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 13, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until February 29, 2020 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from December 30, 2019 through January 23, 2020, are only valid for the area south of 46°28.00 N. Lat.

(2) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning 8:00 A.M. February 21, 2020, until 8:00 A.M. March 21, 2020. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-249-1206.

(3) Unless otherwise amended all other provisions of the permanent rule remain in effect.

NEW SECTION

WAC 220-340-45000R Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

(a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(b) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before 8:00 a.m. January 22, 2020, are prohibited from fishing in the waters between Oysterville (46°33.00) and the U.S./Canada border until 8:00 a.m. February 29, 2020.

(2) Open area: The area from Klipsan Beach (46°28.00) to the US/Canada Border and Grays Harbor.

(3) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00' N. Lat. 124°20.70' W. Lon.

(b) Northwest Corner: 47°28.00' N. Lat. 124°34.00' W. Lon.

(c) Southwest Corner: 47°08.00' N. Lat. 124°25.50' W. Lon.

(d) Southeast Corner (Copolis River): 47°08.00' N. Lat. 124°11.20' W. Lon.

(4) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(5) Effective 8:00 a.m. February 21, 2020 The Makah special management area (SMA) is open to fishing. The SMA includes the waters between 48°02.15' N. Lat. and 48°19.50' N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner (Tatoosh Island)

(b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.

(c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.

(d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(6) Unless otherwise amended all other provisions of the permanent rule remain in effect.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 8:00 a.m. February 21, 2020:

WAC 220-340-42000X Commercial crab fishery—Unlawful acts. (20-08)

WAC 220-340-45000Q Commercial crab fishery—Seasons and areas—Coastal. (20-08)

WSR 20-05-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-29—Filed February 13, 2020, 4:41 p.m., effective February 13, 2020, 4:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial crabbing rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500G; and amending WAC 220-340-455.

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 will close Region 2W to commercial crab harvest at 6:00 p.m. on February 15, 2020, due to reaching the harvest quota. Region 3-3 commercial crab harvest will continue with fifty pots per license. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: February 13, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500H Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455:

1) Effective immediately until further notice, all of Crab Management Regions 1, 2-East, 3-1, and 3-2 are closed. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B. Region 2-East includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East. Region 3-1 includes Marine Fish-Shellfish Catch Reporting Areas 23A and 23B. Region 3-2 includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

2) Effective immediately until further notice, it is permissible to fish for Dungeness crab for commercial purposes in Crab Management Region 3-3. Region 3-3 includes Catch Reporting Areas 23C and 29.

3) Effective immediately through 5:59 p.m. February 15, 2020, it is permissible to fish for Dungeness crab for commercial purposes in Crab Management Region 2-West. Region 2-West includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D, and 26A West.

4) Effective immediately, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 3-3 and 2-West.

5) All remaining buoy tags per license must be onboard the designated vessel and available for immediate inspection.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-45500G Commercial crab fishery—Seasons and areas—Puget Sound. (20-12)

WSR 20-05-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-30—Filed February 14, 2020, 10:39 a.m., effective February 17, 2020]

Effective Date of Rule: February 17, 2020.

Purpose: Amends recreational fishing rules for the Chehalis River Basin.

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

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: The preseason forecasted return of Chehalis Basin wild steelhead is six thousand six hundred sixteen fish; this is far below the conservation goal of eight thousand six hundred spawning steelhead. Review of in-season harvest data indicates that the return may even be lower than the preseason forecast. In addition, the estimate of Chehalis Basin wild steelhead returning to spawn have not reached the escapement goal for each of the last three years. Based on this, state and tribal comanagers are in agreement that measures need to be taken to correct this declining trend. 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: February 14, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000A Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-312-020, effective February 17 through May 22, 2020, the following waters are closed to all fishing:

Chehalis, Elk, Johns, Hoquiam, Newaukum, Satsop, Skookumchuck, Wishkah, and Wynoochee rivers, and Cloquallum and Elk creeks and their tributaries.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 23, 2020:

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

WSR 20-05-067
EMERGENCY RULES
WASHINGTON STATE UNIVERSITY

[Filed February 17, 2020, 8:52 a.m., effective February 17, 2020, 8:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The university is updating the rules regarding student conduct related to the composition of a conduct board.

Note: This emergency rule-making order was originally filed on October 22, 2019. A preproposal for similar permanent rules was filed on October 23, 2019, as WSR 19-21-171, with a proposal filed on January 2, 2020, as WSR 20-02-107, and intended for adoption on March 13, 2020.

Citation of Rules Affected by this Order: Amending WAC 504-26-110.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Reasons for this Finding: The amount of time required for Washington State University (WSU) to currently schedule student conduct hearings presents potential Title IX (of the Civil Rights Act) compliance concerns and may negatively impact both reporting and responding students awaiting a conduct hearing. Therefore, WSU proposes an emergency change to WAC 504-26-110 in order to reduce the difficulty in scheduling cases for a hearing. This change reduces the university conduct board's size from five members to three members, in alignment with the academic integrity hearing board and the university appeals board. This reduction in size will reduce waiting times for hearings by providing more availability of conduct board members in the established conduct board member pool and by providing more flexibility in the scheduling of hearings. Reduced waiting times and more flexible hearing schedules will reduce the risk of noncompliance with Title IX's timely resolution requirements, while also promoting the well-being of reporting and responding students awaiting a conduct board hearing.

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

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

Date Adopted: February 17, 2020.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-110 Composition of conduct board. A conduct board must consist of ~~((five))~~ three members. A quorum of ~~((five))~~ three is needed to hear a matter. The presiding officer is not a member of the conduct board and therefore is not considered for purposes of determining whether there is a quorum. A ~~((majority of))~~ minimum of one conduct board member~~((s))~~ hearing a matter must be an enrolled WSU student~~((s))~~ (undergraduate, graduate, or professional) and may be full-time or part-time. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. When the complainant or respondent is enrolled at a particular campus, at least one member of the conduct board must be from that campus. No conduct board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent.

WSR 20-05-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-31—Filed February 18, 2020, 4:49 p.m., effective February 20, 2020, 12:01 p.m.]

Effective Date of Rule: February 20, 2020, 12:01 p.m.

Purpose: Amends recreational razor clam rules.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000Q; 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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 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: February 18, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000Q 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 20 through 11:59 p.m. February 23, 2020, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. February 20 through 11:59 p.m. February 23, 2020, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. February 20 through 11:59 p.m. February 20, 2020, and 12:01 p.m. February 22 through 11:59 p.m. February 22, 2020, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. February 21 through 11:59 p.m. February 21, 2020, and 12:01 p.m. February 23 through 11:59 p.m. February 23, 2020, 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.

(5) It is unlawful to dig for razor clams at any time in the Long Beach, 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 24, 2020:

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