

WSR 16-07-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-39—Filed March 2, 2016, 3:18 p.m., effective March 2, 2016,
 3:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: Preliminary estimates indicate that sufficient encounters of Chinook in Area 6 allow for an additional limited fishing opportunity based upon the preseason expectations. Preliminary estimates indicate that encounters of Chinook in Area 7 will exceed preseason expectations without modification to the fishery. This emergency rule modifies Areas 6 and 7 fisheries to ensure compliance with conservation objectives and agreed-to management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 2, 2016.

J. W. Unsworth
 Director

NEW SECTION

WAC 232-28-62100Y Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) Catch Record Card Area 6:

(a) It is unlawful to fish for salmon through March 11 and March 19 through April 10, 2016.

(b) Effective March 12 through March 18, daily limit of 2 salmon, no more than 1 Chinook. Release wild Chinook.

(2) Catch Record Card Area 7:

(a) Effective March 12 through April 30, 2016, daily limit of 2 salmon, no more than 1 Chinook. Release wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62100X Puget Sound salmon—Saltwater seasons and daily limits. (16-24)

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

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

WSR 16-07-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-40—Filed March 4, 2016, 10:52 a.m., effective March 4, 2016,
 10:52 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: Extends the ongoing season in SMCRA 1G (John Day Pool) and initiates a season in SMCRA 1F (Bonneville Pool). Harvest to date has been low and sturgeon remain available under the current harvest guidelines for each pool. The regulation continues to allow

the sale of fish as outlined in Section 2. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 27, February 11, 18, 25, and March 3, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

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

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

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

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

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

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

Date Adopted: March 4, 2016.

J. W. Unsworth
Director

NEW SECTION

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

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

(1) Open Area: SMCRA 1F (Bonneville Pool):

(a) Season: 6:00 AM March 14 through 6:00 p.m. March 21, 2016.

(b) Gear: Gill nets with no mesh restriction.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(2) Open Area: SMCRA 1G (The Dalles Pool):

(a) Season: Immediately through 6:00 p.m. March 5, 2016.

(b) Gear: Gill nets with no mesh restriction.

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

(3) Open Area: SMCRA 1H (John Day Pool):

(a) Season: Immediately through 6:00 p.m. March 12, 2016.

(b) Gear: Gill nets with no mesh restriction.

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

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

(a) Season: Immediately through 6:00 p.m. March 21, 2016.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon from 43-54 inches caught in the John Day and Dalles pools may be sold only if caught during open commercial gillnet periods for that pool. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100S Columbia River salmon seasons above Bonneville Dam. (16-33)

WSR 16-07-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-36—Filed March 4, 2016, 2:02 p.m., effective April 2, 2016]

Effective Date of Rule: April 2, 2016.

Purpose: Amend recreational fishing rules in the Klickitat River.

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

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

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

Reasons for this Finding: This emergency rule is needed to correct an error in the permanent rule. This emergency rule filing is consistent with the department of fish and wildlife's Washington sport fishing rules pamphlet. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 4, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500V Eastside—Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 220-310-195, it is unlawful to violate the provisions

below. Unless otherwise amended, all permanent rules remain in effect.

Klickitat River from the mouth (Burlington Northern Railroad Bridge) upstream to the Fisher Hill Bridge: Effective April 2 through May 30, 2016, daily limit will be 2 salmon or hatchery steelhead or one of each. In addition, fishing will be open only on Mondays, Wednesdays, and Saturdays.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 31, 2016:

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

WSR 16-07-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-42—Filed March 8, 2016, 9:33 a.m., effective March 9, 2016]

Effective Date of Rule: March 9, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500U and 220-310-20000E; and amending WAC 220-310-195 and 220-310-200.

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

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

Reasons for this Finding: An emergency rule is needed to close the steelhead fisheries in portions of the Columbia[,] Okanagan and Similkamen rivers to minimize impacts to spawning steelhead. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: March 8, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500W Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective March 9, 2016, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Wenatchee River:** It is permissible to fish for steelhead from the mouth to 400 feet below Tumwater Dam.

(2) **Icicle River:** It is permissible to fish for steelhead from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(3) **Entiat River:** It is permissible to fish for steelhead from the mouth to approximately one half mile upstream to a point perpendicular with the intersection of the Entiat River Road and Hedding Street.

(4) It is unlawful to violate the following provisions during the open times in the waters listed in this section:

(a) Night closure and selective gear rules are in effect.

(b) Daily limit:

(i) Two hatchery steelhead; 20 inch minimum size.

(ii) Five hatchery rainbow trout; less than 20 inches in total length.

(c) Mandatory retention of adipose fin clipped steelhead, except release all steelhead with a floy (anchor) tag attached or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin. Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

(d) Anglers must cease fishing for the day when the daily limit of two hatchery steelhead are obtained, regardless of the number of hatchery rainbow trout obtained.

(7) **Methow River:** It is unlawful to fish for or possess whitefish from the mouth to the confluence of the Chewuch River in Winthrop.

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.

NEW SECTION

WAC 220-310-20000F Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective March 9, 2016, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) It is permissible to fish for steelhead in the Columbia River from Rock Island Dam to the powerlines crossing the Columbia River at Doroga State Park.

(2) It is unlawful to violate the following provisions during the open times in the waters listed in this section:

a. Night closure and selective gear rules are in effect, except bait is permissible.

b. Daily limit:

(i) Two hatchery steelhead, 20 inch minimum size.

(ii) Five hatchery rainbow trout, less than 20 inches in total length.

c. Mandatory retention of adipose fin clipped steelhead, except release all steelhead with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin. Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

d. Anglers must cease fishing for the day when the daily limit of two (2) hatchery steelhead are obtained, regardless of the number of hatchery rainbow trout obtained.

REPEALER

The following sections of the Washington Administrative Code are repealed effective

WAC 220-310-19500U Freshwater exceptions to statewide rules—Eastside. (15-23)

WAC 220-310-20000E Freshwater exceptions to statewide rules—Columbia River. (15-20)

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 16-07-030 EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 10, 2016, 10:02 a.m., effective March 10, 2016, 10:02 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The 2015-17 Biennial Appropriations Act expanded the current K-1 high poverty compliance methodology for teacher allocations to grades K-3 at all schools serving those grades. The purpose of this emergency rule is to align current rules governing K-1 high poverty rules with the biennial budget language. WAC in need of change include WAC 392-140-915, 392-140-916, 392-140-921, 392-140-923, 392-140-932, 392-140-933, 392-140-934, 392-140-935, 392-140-936, 392-140-937, 392-140-939, 392-140-942, and 392-140-945.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-140-921 and 392-140-933; and amending WAC 392-140-915, 392-140-923, and 392-140-932.

Statutory Authority for Adoption: RCW 28A.150.290 and 84.52.0531.

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: Without this rule adoption prior to January, districts may receive an allocation greater than what the state budget allows.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 29, 2016.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-915 High poverty funding—Process and definition of eligible schools. For the purposes of this section, an eligible school is a school administered by a public school district board or a public charter school board in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building. Schools administered by school districts that are part of a district that receives any type of K-6 small school funding or the school does not receive remote and necessary funding are not eligible schools under this section. If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature, subject to funding provided in the Omnibus Appropriations Act.

CEDARS data as of October of the previous school year will be used to determine school eligibility. A CEDARS extract of October 1st data will be pulled on March 31st to be used as the basis for K-3 high poverty funding eligibility for the subsequent school year. The list of eligible schools will be published by mid April. No changes to CEDARS data made after March 31st will be considered, and appeals will not be allowed.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's or charter school's F-203 from September through December. Funding based on average annual full-time equivalent enrollment reported in final approved eligible schools will begin in January and continue through August. Districts and charter schools must meet the legislative compliance requirements of the K-1 high poverty funding in order to retain the full allotment.

NEW SECTION

WAC 392-140-916 K-3 class size funding. Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropria-

tions Act for grades K-3 at nonhigh poverty and high poverty schools will be based upon budgeted K-3 enrollment at both nonhigh poverty and high poverty schools as stated in the district's F-203 revenue estimate from September through December for the year budgeted. Districts will also input their estimated K-3 and K-3 high poverty weighted average class size for purposes of funding from September through December. K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs. Funding based on actual average annual FTE enrollment reported in the P-223 will begin in January and will continue through August. Districts must meet the legislative compliance requirements of both K-3 and K-3 high poverty class size funding in order to generate the full allotment.

AMENDATORY SECTION (Amending WSR 14-12-004, filed 5/21/14, effective 6/21/14)

WAC 392-140-923 ((K-1 high poverty)) K-3 class size—Enrollment. ((School level enrollment by grade at each of the high poverty eligible schools will be considered from the current school year October 1 CEDARS data inclusive of changes through the enrollment count day in January, March, and June.)) Grade level K-3 high poverty and non-high poverty enrollment from a district's P-223 reporting will be considered in the compliance calculations for the months of January, March, and June. All students in ALE programs will be excluded from the compliance calculation. ((First grade and full day kindergarten students will be considered a 1.0 FTE, while half day kindergartners will be considered a 0.5 FTE.))

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-932 ((K-1 high poverty)) K-3 class size—Teachers. The superintendent of public instruction shall include in the calculation of high poverty class size compliance those teachers reported on the S-275 at the eligible schools that are coded in programs 01 ((and 79)) to grade group K ((or)), 1, 2, or 3, and are reported in one of the following duty roots:

- Duty Root 31 - Elementary homeroom teacher;
- Duty Root 33 - Other teacher;
- Duty Root 34 - Elementary specialist teacher;
- Duty Root 52 - Substitute teacher;
- Duty Root 63 - Contractor teacher;

S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

Program 21 special education teachers coded to grade K ((or 1 at the eligible schools)), 1, 2, or 3 multiplied by the annual percentage of students in special education instruction used in determination of a district's or charter school's 3121 revenue will be included.

Teachers coded to program 02 alternative learning experience shall be excluded.

NEW SECTION

WAC 392-140-934 K-3 class size—Supplemental FTE teachers. As used in this chapter, "supplemental full-time equivalent teachers" means the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275. Teachers, for the purpose of this section, are defined in WAC 392-140-932. Supplemental full-time equivalent teachers are determined as follows:

(1) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the school district's most current report S-275.

(2) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

Supplemental teacher FTE must be reported to the office of superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported by individual grade level K, 1, 2, and 3, as well as separately for nonhigh poverty and high poverty schools.

NEW SECTION

WAC 392-140-936 K-3 demonstrated class size—High poverty schools. Demonstrated class size across all high poverty eligible schools will be calculated by dividing the total teachers and supplemental teacher FTE for the individual grade levels of K, 1, 2, or 3, as described in WAC 392-140-932 into the calculated combined total enrollment across all high poverty schools in the individual grade levels of K, 1, 2, or 3.

NEW SECTION

WAC 392-140-939 K-3 demonstrated class size—Nonhigh poverty schools. Demonstrated class size across all nonhigh poverty eligible schools will be calculated by dividing the total teachers and supplemental teacher FTE for the individual grade levels of K, 1, 2, or 3, as described in WAC 392-140-932 into the calculated combined total enrollment across all nonhigh poverty schools in the individual grade levels of K, 1, 2, or 3.

NEW SECTION

WAC 392-140-942 Weighted average class size—High poverty schools. A K-3 high poverty weighted average class size will be calculated by first multiplying the high poverty enrollment in each of the grades K, 1, 2, or 3 by the demonstrated class size for each respective grade as defined in WAC 392-140-937. The result of those four separate calculations by grade will be summed, and the total will be divided by total K-3 high poverty enrollment as described in WAC 392-140-923, which will result in K-3 high poverty weighted average class size.

A K-3 high poverty max funded class size enhancement will be calculated first by taking the high poverty enrollment in each of grades K, 1, 2, or 3 by the class sizes provided in the Omnibus Appropriations Act. The result of those four separate calculations by grade will be summed, and that total will be divided by the total K-3 high poverty enrollment as described in WAC 392-140-923, which will result in the K-3 high poverty max funded class size enhancement for a specific district.

Districts will generate apportionment funding based on the greater of the K-3 high poverty weighted average class size or the K-3 high poverty max funded class size enhancement. For the months of September through December, districts will generate K-3 high poverty apportionment funding based on the class size input into their F-203 revenue estimate. Beginning in January the results of the most recent compliance calculation will be utilized for apportionment purposes through the end of the school year.

NEW SECTION

WAC 392-140-945 Weighted average class size—Nonhigh poverty schools. A K-3 nonhigh poverty weighted average class size will be calculated by first multiplying the nonhigh poverty enrollment in each of the grades K, 1, 2, or 3 by the demonstrated class size for each respective grade as defined in WAC 392-140-937. The result of those four separate calculations by grade will be summed, and the total will be divided by total K-3 nonhigh poverty enrollment as described in WAC 392-140-923, which will result in K-3 nonhigh poverty weighted average class size.

A K-3 nonhigh poverty max funded class size enhancement will be calculated first by taking the nonhigh poverty enrollment in each of grades K, 1, 2, or 3 by the class sizes provided in the Omnibus Appropriations Act. The result of those four separate calculations by grade will be summed, and that total will be divided by the total K-3 nonhigh poverty enrollment as described in WAC 392-140-923, which will result in the K-3 nonhigh poverty max funded class size enhancement for a specific district.

Districts will generate apportionment funding based on the greater of the K-3 nonhigh poverty weighted average class size or the K-3 nonhigh poverty max funded class size enhancement. For the months of September through December, districts will generate K-3 nonhigh poverty apportionment funding based on the class size input into their F-203 revenue estimate. Beginning in January the results of the most recent compliance calculation will be utilized for apportionment purposes through the end of the school year.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-140-921 K-1 high poverty class size compliance.
- WAC 392-140-933 K-1 demonstrated class size.

WSR 16-07-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-43—Filed March 10, 2016, 11:37 a.m., effective April 23, 2016]

Effective Date of Rule: April 23, 2016.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: Curl Lake has been utilized by the Washington department of fish and wildlife (WDFW) as an acclimation pond for Endangered Species Act (ESA) listed Tucannon River spring Chinook salmon. Beginning in 2016, WDFW will also short-term acclimate ESA listed Tucannon River steelhead, after the spring Chinook have been released. The additional time needed to acclimate steelhead will delay the stocking of rainbow trout into this body of water by a couple of weeks. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 10, 2016.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19500X Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective April 23 through May 14, 2016, it is unlawful to fish in waters of Curl Lake (Columbia Co.)

REPEALER

The following section of the Washington Administrative Code is repealed effective May 15, 2016:

WAC 220-310-19500X Freshwater exceptions to statewide rules. (16-43)

WSR 16-07-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-45—Filed March 10, 2016, 4:06 p.m., effective March 10, 2016, 4:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

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

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

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

Reasons for this Finding: An emergency rule is needed to close salmon fishing in Marine Area 7 as Washington department of fish and wildlife and tribal comanagers agreed to a limited number of Chinook encounters (retaining or releasing fish) that anglers are allowed in Marine Area 7. Preliminary estimates indicate that anglers have reached one hundred five percent of those encounters. An emergency rule is needed to close salmon fishing in Marine Area 7 to comply with conservation objectives and agreed-to management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 10, 2016.

J. W. Unsworth
 Director

NEW SECTION

WAC 232-28-62100Z Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective immediately through April 30, 2016, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) **Catch Record Card Area 6:**

(a) Effective immediately through March 11 and March 19 through April 10, it is unlawful to fish for salmon.

(b) March 12 through March 18, daily limit of 2 salmon, no more than 1 Chinook. Release wild Chinook.

(2) **Catch Record Card Area 7:**

(a) March 12 through March 13, daily limit of 2 salmon, no more than 1 Chinook. Release wild Chinook.

(b) March 14 through April 30, it is unlawful to fish for salmon.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62100Y Puget Sound salmon—Saltwater seasons and daily limits. (16-39)

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

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

WSR 16-07-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-44—Filed March 11, 2016, 2:34 p.m., effective March 11, 2016, 2:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 4 and 5. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 11, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000L Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective immediately through 11:59 a.m. March 14, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 p.m. March 15 through 11:59 p.m. March 23, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 a.m. March 24 through 11:59 a.m. March 31, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 p.m. March 18 through 11:59 p.m. March 20, 2016, 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.

(5) Effective 12:01 p.m. March 18 through 11:59 p.m. March 20, 2016, 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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-36000K Razor clams—Areas and seasons. (16-34)

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. March 31, 2016:

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

Date Adopted: March 15, 2017 [2016].

J. W. Unsworth
Director

WSR 16-07-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-48—Filed March 15, 2016, 12:08 p.m., effective March 15, 2017 [2016], 7:30 p.m.]

Effective Date of Rule: March 15, 2017 [2016], 7:30 p.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000M and 220-52-04000N; and amending WAC 220-52-040.

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

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

Reasons for this Finding: The provisions of this regulation increase pot limits in Region 1 to 100 pots per license on March 16 at 7:00 a.m. The provisions of this rule will close Region 3-1 and 3-3 on March 15. This rule will also close the by-catch allowance for Tanner crabs in Region 3-1 on March 15. The provisions of this rule will maintain the closure for commercial harvest in Region 2 East, Region 2 West and Region 3-2. There is sufficient allocation in Region 1, Region 3-1 and Region 3-3 for them to remain open. These provisions are in conformity with agreed management plans and addendums 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

NEW SECTION

WAC 220-52-04000P Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Effective immediately, until 7:30 PM, March 15, 2016, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management Region 1. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B.

(2) Effective immediately, until 7:30 PM, March 15, 2016, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-1. Region 3-1 includes Marine Fish-Shellfish Catch Reporting Areas 23A and 23B.

(3) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

(4) Effective 7:30 PM, March 15, 2016, until further notice, Crab Management Region 3-1 and Region 3-3 are closed. Region 3-1 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B. Region 3-3 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29.

(5) Effective immediately, until further notice, Crab Management Region 2 East and Region 2 West are closed. Region 2 East includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East. Region 2 West includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25D, 25B and 26A West.

(6) Effective immediately, until further notice, Crab Management Region 3-2 is closed. Region 3-2 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25E, 25A and 23D.

NEW SECTION

WAC 220-52-04000Q Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-52-040, WAC 220-52-043 and WAC 220-52-046, effective 8:00 a.m. February 5, 2015, until further notice, incidental catch may not be retained. It is unlawful to retain salmon, food fish, or any shellfish other than octopus and Tanner crabs (*Chionoecetes* spp.) that is taken incidental to any commercial crab fishing. Additionally, Tanner crabs may only be retained in Crab Region 1 (defined as all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B). Tanner crabs retained must be males with a minimum width of 4.5 inches across the widest point in the carapace.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 7:30 p.m. March 15, 2016:

- WAC 220-52-04000M Commercial crab fishery—Unlawful acts (16-21)
- WAC 220-52-04000N Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (16-37)

WSR 16-07-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-46—Filed March 16, 2016, 10:36 a.m., effective April 16, 2016, 8:00 a.m.]

Effective Date of Rule: April 16, 2016, 8:00 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000P; and amending WAC 220-310-180.

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

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

Reasons for this Finding: An emergency rule is needed to open Failor Lake which will allow boys and girls fourteen and younger to participate in a fishing derby hosted by the Grays Harbor Poggie Club. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 16, 2016.

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

NEW SECTION

WAC 220-310-18000P Exceptions to statewide rules—Failor Lake (Grays Harbor Co.) Notwithstanding the provisions of WAC 220-310-180, Failor Lake is open to fishing on April 16, 2016, from 8:00 a.m. to 12:00 p.m. for anglers age fourteen years old and younger who are participating in the youth fishing event. Adults may assist children participating in the event, but no child may fish with more than one fishing rod. All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 p.m. April 16, 2016:

- WAC 220-310-18000P Exceptions to statewide rules—Failor Lake (Grays Harbor Co.)

WSR 16-07-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-47—Filed March 16, 2016, 10:38 a.m., effective April 2, 2016]

Effective Date of Rule: April 2, 2016.

Purpose: Amend recreational fishing rules for Bowers Lake (Vance Creek Pond).

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000Q; and amending WAC 220-310-180.

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 regulation is needed to allow an early fishing opportunity for juveniles, seniors, and anglers with a disability who possess a department of fish and wildlife designated harvester card. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: March 16, 2016.

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

NEW SECTION

WAC 220-310-18000Q Exceptions to statewide rules—Bowers Lake (Vance Creek Pond #1) Grays Harbor Co. Notwithstanding the provisions of WAC 220-310-180, effective April 2 through April 10, 2016, juveniles, holders of a senior license, and anglers with Washington Department of Fish and Wildlife disability status and who have a designated harvester card may fish in those waters of Bowers Lake (Vance Creek Pond #1).

REPEALER

The following section of the Washington Administrative Code is repealed effective April 11, 2016:

WAC 220-310-18000Q Exceptions to statewide rules—
Bowers Lake (Vance Creek Pond
#1) Grays Harbor Co.

WSR 16-07-068 EMERGENCY RULES

TRANSPORTATION COMMISSION

[Filed March 16, 2016, 11:30 a.m., effective March 18, 2016, 7:00 p.m.]

Effective Date of Rule: March 18, 2016, 7:00 p.m.

Purpose: To modify the hours and days when tolling is in effect on the Interstate 405 express toll lanes between Bellevue and Lynnwood.

Citation of Existing Rules Affected by this Order: Amending WAC 468-270-077, 468-270-110 and 468-270-120; and new section WAC 468-270-078.

Statutory Authority for Adoption: Not applicable.

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: Legislative finding provided in the 2016 supplemental transportation budget, and further finding by the transportation commission, that to preserve the general welfare, the hours and days of operation when tolling is in effect for the express toll lanes on Interstate 405 must be further defined and adjusted. While the initial implementation of the express toll lanes has benefited many commuters, additional operational changes are needed to support effective use of this corridor, critical for the movement of people and goods in Washington state.

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 3, Repealed 0.

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

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

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

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

Date Adopted: March 15, 2016.

Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-077 What are the toll rates for the I-405 express toll lanes? When tolling is in effect on the I-405 express toll lanes (~~(are in operation)~~), the *Good To Go!*TM toll rate schedule shall be a minimum toll rate of \$0.75 and a maximum toll rate of \$10.00. *Good To Go!*TM Pass toll rates shall vary in amount by time of day and level of traffic congestion, and will automatically adjust within the established toll schedule using dynamic tolling to ensure average vehicle speeds in the lanes above forty-five miles per hour at least ninety percent of the time.

The commission shall periodically review the *Good To Go!*TM toll rate schedule against traffic performance outlined in RCW 47.56.880 to determine if the *Good To Go!*TM toll rates are effectively maintaining travel time, speed, and reliability, and shall adjust the toll rate schedule as needed to maintain performance standards.

The toll rate for a Pay By Mail transaction is equal to the *Good To Go!*TM Pass toll rate plus \$2.00.

NEW SECTION

WAC 468-270-078 What are the hours that tolling will be in effect on the I-405 express toll lanes? Tolling will be in effect on the I-405 express toll lanes weekdays, Monday through Friday, from 5:00 a.m. to 7:00 p.m. (excluding the weekdays on which holidaysⁱ are observed).

When tolling is not in effect on the I-405 express toll lanes, including on weekends and holidaysⁱ, the lanes are open to all vehicles regardless of occupancy, and a transponder is not needed to travel toll-free.

ⁱ New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-110 What vehicles are exempt from paying tolls on the I-405 express toll lanes? When tolling is in effect on the I-405 express toll lanes, except as provided

herein, all vehicles using the I-405 express toll lanes must pay the required toll. Only qualified vehicles may be exempt from paying tolls. The registered owner and operator of the qualified vehicle must comply with the requirements of the department in order to obtain the exemption. The following vehicles shall qualify for exemption:

- (1) Transit buses and vanpools as specified in RCW 47.56.880;
- (2) Carpools, as defined for the facility in WAC 468-270-120;
- (3) Motorcycles;
- (4) Washington state patrol vehicles directly providing service to the express toll lane facility;
- (5) Department maintenance vehicles directly involved in roadway maintenance on the I-405 express toll lanes, including the department's incident response vehicles responding to incidents and WSDOT tow trucks;
- (6) Authorized emergency vehicles on bona fide emergencies; and
- (7) Tow trucks authorized by Washington state patrol responding to clear blocking vehicles from the toll facility.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-120 How many occupants are required to be considered an eligible carpool for toll exemption on I-405 express toll lanes? Between 5 a.m. to 9 a.m. and 3 p.m. to 7 p.m., Monday through Friday, (excluding the ~~((days))~~ weekdays on which holidaysⁱ are observed) you must have three or more occupants in your vehicle to qualify as a toll-free carpool. At all other times when tolling is in effect on the I-405 express toll lanes, you must have two or more occupants in your vehicle to qualify as a toll-free carpool. Occupancy requirements do not apply to vehicles that are otherwise exempt from tolls pursuant to WAC 468-270-110 or authorized as an HOV vehicle as defined in chapter 468-510 WAC.

ⁱ New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

WSR 16-07-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-49—Filed March 16, 2016, 4:13 p.m., effective March 16, 2016, 4:13 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for sea urchins.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300W.

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

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

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

Reasons for this Finding: The commercial sea urchin fishery is being closed due to lack of interest in further harvest of green urchins. No known processors have expressed interest in buying green sea urchins due to low roe quality. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 16, 2016.

Ron Warren
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300W Sea urchins. (16-28)

WSR 16-07-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-50—Filed March 17, 2016, 9:40 a.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: Amend recreational fishing rules for hardshell clams and oysters.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

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

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

Reasons for this Finding: Surveys at Sequim Bay State Park indicate that the oyster and clam populations on this beach have increased, and the season can be extended to three months. Surveys at Potlatch DNR and Potlatch State Park

indicated that oyster population can support a 3.5 month season; oyster seasons should coincide with clam seasons on those beaches. These emergency rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: March 17, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-35000G Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Potlatch State Park: April 1 through July 15 only.
- (2) Potlatch DNR Tidelands: April 1 through July 15 only.
- (3) Sequim Bay State Park: April 1 through June 30 only.

NEW SECTION

WAC 220-56-38000L Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands, except during the open periods specified herein:

- (1) Potlatch State Park: April 1 through July 15 only.
- (2) Potlatch DNR Tidelands: April 1 through July 15 only.
- (3) Sequim Bay State Park: April 1 through June 30 only.

WSR 16-07-091

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed March 18, 2016, 9:21 a.m., effective March 19, 2016]

Effective Date of Rule: March 19, 2016.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: An effective date of March 19, 2016, is necessary to comply with the Nuclear Regulatory Commission (NRC) rule effective date and maintain compatibility of federal agreement state status (RCW 70.98.050 and 70.98.110).

Purpose: Chapter 246-237 WAC, Radiation protection—Physical protection of Category 1 and Category 2 quantities of radioactive material, emergency adoption is necessary to comply with the United States NRC rule effective date of March 19, 2016, and maintain compatibility as a federal agreement state as required under RCW 70.98.050 State radiation control agency and 70.98.110 Federal-state agreements.

Statutory Authority for Adoption: RCW 70.98.050.

Other Authority: RCW 70.98.110.

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 Administrative Procedure Act allows the department of health (department) to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) 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;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

The agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

An emergency rule is necessary to adopt new chapter 246-237 WAC, Radiation protection—Physical protection of Category 1 and Category 2 quantities of radioactive material, to include security requirements for radioactive materials licensees to possess, store, transport, or use radioactive materials in "quantities of concern" as defined in the chapter.

The emergency adoption is necessary to comply with the NRC rule effective date deadline of March 19, 2016, and maintain compatibility of federal agreement state status as required under RCW 70.98.050 and 70.98.110. The immediate adoption of these rules is necessary for the preservation of

the public health and safety specifically to protect against terrorist threats.

Recent terrorist attacks have heightened concerns about the use of risk-significant radioactive materials in a malevolent act. Such an attack is of particular concern because of the widespread use of radioactive materials in the United States by industrial, medical, and academic institutions. The theft or diversion of risk-significant quantities of radioactive materials could lead to their use in a radiological dispersal device or a radiological exposure device.

The NRC's current radioactive materials regulations provide requirements for the safe use, transportation, and control of licensed radioactive material. Loss of control of risk-significant radioactive material, whether inadvertent or through a deliberate act, could result in significant adverse impacts that could reasonably constitute a threat to the public health and safety or the common defense and security of the United States. The NRC determined that certain licensed material should be subject to enhanced security requirements and safeguarded during transport, and that individuals with unescorted access to risk-significant quantities of radioactive material should be subject to background investigations.

Therefore, good cause exists for emergency adoption of chapter 246-237 WAC under RCW 34.05.350 (1)(a) and (b).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 27, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 27, Amended 0, Repealed 0.

Date Adopted: March 1, 2016.

John Wiesman, DrPH, MPH
Secretary

Chapter 246-237 WAC

RADIATION PROTECTION—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

NEW SECTION

WAC 246-237-001 Purpose and scope. (1) This chapter has been established to provide the requirements for the physical protection program for any licensee that possesses an aggregated Category 1 or Category 2 quantity of radioactive material listed in WAC 246-237-900 Appendix A: Table 1—Category 1 and Category 2. These requirements provide reasonable assurance of the security of Category 1 or Category 2 quantities of radioactive material by protecting these

materials from theft or diversion. Specific requirements for access to material, use of material, transfer of material, and transport of material are included. No provision of this chapter authorizes possession of licensed material.

(2) WAC 246-237-021 through 246-237-057 apply to any person who, under the rules in this chapter, possesses or uses at any site an aggregated Category 1 or Category 2 quantity of radioactive material.

(3) WAC 246-237-071 through 246-237-081 apply to any person who, under the rules of this chapter:

(a) Transports or delivers to a carrier for transport in a single shipment, a Category 1 or Category 2 quantity of radioactive material; or

(b) Imports or exports a Category 1 or Category 2 quantity of radioactive material. The provisions in this chapter apply only to the domestic portion of the transport.

NEW SECTION

WAC 246-237-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise:

(1) "**Access control**" means a system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(2) "**Act**" means the Atomic Energy Act of 1954, including any amendments thereto.

(3) "**Aggregated**" means accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a Category 2 quantity of radioactive material.

(4) "**Agreement state**" means any state with which the Atomic Energy Commission or the NRC has entered into an effective agreement under subsection 274b of the act. Nonagreement state means any other state.

(5) "**Approved individual**" means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with WAC 246-237-021 through 246-237-033 and who has completed the training required by WAC 246-237-043(3).

(6) "**Background investigation**" means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(7) "**Becquerel (Bq)**" means the SI unit of activity. One becquerel is equal to 1 disintegration or transformation per second (s⁻¹).

(8) "**By-product material**" means:

(a) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution

extraction operations do not constitute "by-product material" within this definition;

(c)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that:

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

(9) "**Carrier**" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(10) "**Category 1 quantity of radioactive material**" means a quantity of radioactive material meeting or exceeding the Category 1 threshold in Table 1 of WAC 246-237-900 Appendix A: Table 1—Category 1 and Category 2. This is determined by calculating the ratio of the total activity of each radionuclide to the Category 1 threshold for that radionuclide and adding the ratios together. If the sum equals or exceeds 1, the quantity would be considered a Category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(11) "**Category 2 quantity of radioactive material**" means a quantity of radioactive material meeting or exceeding the Category 2 threshold but less than the Category 1 threshold in Table 1 of WAC 246-237-900 Appendix A: Table 1—Category 1 and Category 2. This is determined by calculating the ratio of the total activity of each radionuclide to the Category 2 threshold for that radionuclide and adding the ratios together. If the sum equals or exceeds 1, the quantity would be considered a Category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(12) "**Curie**" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} transformations per second (tps).

(13) "**Diversions**" means the unauthorized movement of radioactive material subject to this chapter to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(14) "**Escorted access**" means accompaniment while in a security zone by an approved individual who maintains

continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

(15) "**FBI**" means the federal bureau of investigation.

(16) "**Fingerprint orders**" means the orders issued by the NRC or the legally binding requirements issued by agreement states that require fingerprints and criminal history records checks for individuals with unescorted access to Category 1 and Category 2 quantities of radioactive material or safeguards information-modified handling.

(17) "**Government agency**" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

(18) "**License**" means, except where otherwise specified, a license for radioactive material issued pursuant to the regulations in chapters 246-232, 246-233, 246-235, 246-240, 246-243, or 246-244 WAC.

(19) "**License issuing authority**" means the licensing agency (the department, NRC, or an agreement state) that issued the license.

(20) "**LLEA (local law enforcement agency)**" means a public or private organization that has been approved by a federal, state, or local government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed Category 1 or Category 2 quantity of radioactive material is used, stored, or transported.

(21) "**Lost or missing licensed material**" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(22) "**Mobile device**" means a piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

(23) "**Movement control center**" means an operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies, and can request and coordinate appropriate aid.

(24) "**No-later-than arrival time**" means the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than six hours after the estimated arrival time for shipments of Category 2 quantities of radioactive material.

(25) "**NRC**" means the U.S. Nuclear Regulatory Commission.

(26) "**Person**" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than NRC or the

Department of Energy, any state or any political subdivision of, or any political entity within, a state, any foreign government or nation, or any political subdivision of any such government or nation, or other entity, and any legal successor, representative, agent or agency of the foregoing.

(27) **"Reviewing official"** means the individual who makes the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the Category 1 or Category 2 quantities of radioactive materials that are possessed by the licensee.

(28) **"Sabotage"** means deliberate damage, with malevolent intent, to a Category 1 or Category 2 quantity of radioactive material, a device that contains a Category 1 or Category 2 quantity of radioactive material, or the components of the security system.

(29) **"Safe haven"** means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

(30) **"Security zone"** means any temporary or permanent area determined and established by the licensee for the physical protection of Category 1 or Category 2 quantities of radioactive material.

(31) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) **"Telemetric position monitoring system"** means a data transfer system that captures information by instrumentation or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(33) **"Trustworthiness and reliability"** are characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to Category 1 or Category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(34) **"Unescorted access"** means solitary access to an aggregated Category 1 or Category 2 quantity of radioactive material or the devices that contain the material.

(35) **"United States"** means when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

NEW SECTION

WAC 246-237-011 Specific exemptions. (1) The department may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the rules in this chapter as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

(2) Any licensee's activities are exempt from the requirements of WAC 246-237-021 through 246-237-057 to the

extent that its activities are included in a security plan required by 10 C.F.R. Part 73.

(3) A licensee who possesses radioactive waste that contains Category 1 or Category 2 quantities of radioactive material is exempt from the requirements of WAC 246-237-021 through 246-237-081, except that any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than two thousand kg (four thousand four hundred nine pounds) is not exempt from the requirements of this chapter. The licensee shall implement the following requirements to secure the radioactive waste:

(a) Use continuous physical barriers which allow access to the radioactive waste only through established access control points;

(b) Use a locked door or gate with monitored alarm at the access control point;

(c) Assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(d) Immediately notify the LLEA and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains Category 1 or Category 2 quantities of radioactive material.

NEW SECTION

WAC 246-237-021 Personnel access authorization requirements for Category 1 or Category 2 quantities of radioactive material. (1) General.

(a) Each licensee who possesses an aggregated quantity of radioactive material at or above the Category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this chapter.

(b) An applicant for a new license and each licensee who would become newly subject to the requirements of this chapter, upon application for modification of its license, shall implement the requirements of this chapter, as appropriate, before taking possession of an aggregated Category 1 or Category 2 quantity of radioactive material.

(c) Any licensee who has not previously implemented the security orders or been subject to the provisions of this chapter shall implement the provisions of this chapter before aggregating radioactive material to a quantity that equals or exceeds the Category 2 threshold.

(2) General performance objective. The licensee's access authorization program must ensure that the individuals specified in subsection (3)(a)(i) and (ii) of this section are trustworthy and reliable.

(3) Applicability.

(a) Licensees shall subject the following individuals to an access authorization program:

(i) Any individual whose assigned duties require unescorted access to Category 1 or Category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(ii) Reviewing officials.

(b) Licensees need not subject the categories of individuals listed in WAC 246-237-029(1) to the investigation elements of the access authorization program.

(c) Licensees shall approve for unescorted access to Category 1 or Category 2 quantities of radioactive material only those individuals with job duties which require unescorted access to Category 1 or Category 2 quantities of radioactive material.

(d) Licensees may include individuals needing access to safeguards information-modified handling under 10 C.F.R. Part 73 in the access authorization program under WAC 246-237-021 through 246-237-033.

NEW SECTION

WAC 246-237-023 Access authorization program requirements. (1) Granting unescorted access authorization.

(a) Licensees shall implement the requirements of this chapter for granting initial or reinstated unescorted access authorization.

(b) Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by WAC 246-237-043(3) before being allowed unescorted access to Category 1 or Category 2 quantities of radioactive material.

(2) Reviewing officials. Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to Category 1 or Category 2 quantities of radioactive materials possessed by the licensee.

(a) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide, under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, federal or state agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a state to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every ten years in accordance with WAC 246-237-025(2).

(b) Reviewing officials must be permitted to have unescorted access to Category 1 or Category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(c) Reviewing officials cannot approve other individuals to act as reviewing officials.

(d) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(i) The individual has undergone a background investigation that included fingerprinting and an FBI criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(ii) The individual is subject to a category listed in WAC 246-237-029(1).

(3) Informed consent.

(a) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals who meet the requirements of WAC 246-237-025(2). A signed consent must be obtained prior to any reinvestigation.

(b) The subject individual may withdraw their consent at any time. Licensees shall inform the individual that:

(i) If an individual withdraws their consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew their consent; and

(ii) The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(4) Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this chapter is sufficient cause for denial or termination of unescorted access.

(5) Determination basis.

(a) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of this chapter.

(b) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this chapter and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(c) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(d) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(e) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(6) Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(7) Right to correct and complete information.

(a) Prior to any final adverse determination, licensees shall provide each individual subject to this chapter with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of one year from the date of the notification.

(b) If, after reviewing their criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the FBI, Criminal Justice Information Services Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 C.F.R. 16.30 through 16.34. In the latter case, the FBI will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least ten days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for their review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(8) Records.

(a) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years from the date the individual no longer requires unescorted access to Category 1 or Category 2 quantities of radioactive material.

(b) The licensee shall retain a copy of the current access authorization program procedures as a record for three years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(c) The licensee shall retain the list of persons approved for unescorted access authorization for three years after the list is superseded or replaced.

NEW SECTION

WAC 246-237-025 Background investigations. (1)

Initial investigation. Before allowing an individual unescorted access to Category 1 or Category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the seven years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(a) Fingerprinting and an FBI identification and criminal history records check in accordance with WAC 246-237-027;

(b) Verification of true identity. Licensees shall verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who they claim to be. A licensee shall review official identification documents (driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with WAC 246-237-031. Licensees shall certify in writing that the identification was properly reviewed, and shall maintain the certification and all related documents for review upon inspection;

(c) Employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent seven years before the date of application;

(d) Verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;

(e) Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family including, but not limited to, the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under this chapter must be limited to whether the individual has been and continues to be trustworthy and reliable;

(f) The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (for example, seek references not supplied by the individual); and

(g) If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee but at least after ten business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwilling-

ness, or inability in the record of investigation; and attempt to obtain the information from an alternate source.

(2) Grandfathering.

(a) Individuals who have been determined to be trustworthy and reliable for unescorted access to Category 1 or Category 2 quantities of radioactive material under the fingerprint orders may continue to have unescorted access to Category 1 and Category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

(b) Individuals who have been determined to be trustworthy and reliable under the provisions of 10 C.F.R. Part 73 or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to Category 1 and Category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 C.F.R. Part 73 or a security order. Security order, in this context, refers to any order that was issued by the department that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk-significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(3) Reinvestigations. Licensees shall conduct a reinvestigation every ten years for any individual with unescorted access to Category 1 or Category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with WAC 246-237-027. The reinvestigations must be completed within ten years of the date on which these elements were last completed.

NEW SECTION

WAC 246-237-027 Requirements for criminal history records checks of individuals granted unescorted access to Category 1 or Category 2 quantities of radioactive material. (1) General performance objective and requirements.

(a) Except for those individuals listed in WAC 246-237-029 and those individuals grandfathered under WAC 246-237-025(2), each licensee subject to the provisions of this chapter shall fingerprint each individual who is to be permitted unescorted access to Category 1 or Category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to Category 1 or Category 2 quantities of radioactive materials for that individual.

(b) The licensee shall notify each affected individual that their fingerprints will be used to secure a review of their criminal history record, and shall inform them of the procedures for revising the record or adding explanations to the record.

(c) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to Category 1 or Category 2 quantities of radioactive materials if:

(i) The individual returns to the same facility that granted unescorted access authorization within three hundred sixty-five days of the termination of their unescorted access authorization; and

(ii) The previous access authorization was terminated under favorable conditions.

(d) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to Category 1 or Category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this chapter, or the fingerprint orders, or 10 C.F.R. 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of WAC 246-237-031(3).

(e) Licensees shall use information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to Category 1 or Category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(2) Prohibitions.

(a) Licensees may not base a final determination to deny an individual unescorted access authorization to Category 1 or Category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) An arrest more than one year old for which there is no information of the disposition of the case; or

(ii) An arrest which resulted in dismissal of the charge or an acquittal.

(b) Licensees may not use information received from a criminal history records check obtained under this chapter in a manner which would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(3) Procedures for processing of fingerprint checks.

(a) For the purpose of complying with this chapter, licensees shall use an appropriate method to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop TWB-05B32M, Rockville, MD 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to Category 1 or Category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, by calling 1-630-829-9565, or by e-mail to FORMS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at <http://www.nrc.gov/site-help/e-submittals.html>.

(b) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at 301-415-7513.) Combined payment for multiple applications is acceptable. The NRC publishes the amount of the fingerprint check application fee on the NRC's public web site. (To find the current fee amount, go to the electronic submittals page at <http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History Program under Electronic Submission Systems.)

(c) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application for criminal history records checks.

NEW SECTION

WAC 246-237-029 Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials. (1) Fingerprinting, and the identification and criminal history records checks required by WAC 246-237-025, 246-237-027 and Section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting unescorted access to Category 1 or Category 2 quantities of radioactive materials:

(a) An employee of the NRC or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(b) A Member of Congress;

(c) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(d) The governor of a state or their designated state employee representative;

(e) Federal, state, or local law enforcement personnel;

(f) State Radiation Control Program Directors and State Homeland Security Advisors or their designated state employee representatives;

(g) Agreement state employees conducting security inspections on behalf of the NRC under an agreement executed under Section 274.i. of the Atomic Energy Act;

(h) Representatives of the International Atomic Energy Agency engaged in activities associated with the U.S./International Atomic Energy Agency Safeguards Agreement who have been certified by the NRC;

(i) Emergency response personnel who are responding to an emergency;

(j) Commercial vehicle drivers for road shipments of Category 1 and Category 2 quantities of radioactive material;

(k) Package handlers at transportation facilities such as freight terminals and railroad yards;

(l) Any individual who has an active federal security clearance, provided that they make available the appropriate documentation. Written confirmation from the agency/

employer which granted the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to Category 1 or Category 2 quantities of radioactive material; and

(m) Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to Category 1 or Category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of three years from the date the individual no longer requires unescorted access to Category 1 or Category 2 quantities of radioactive material.

(2) Fingerprinting, and the identification and criminal history records checks required by WAC 246-237-025, 246-237-027 and Section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last five years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that they make available the appropriate documentation. Written confirmation from the agency or employer who reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to Category 1 or Category 2 quantities of radioactive material. These programs include, but are not limited to:

(a) National Agency Check;

(b) Transportation Worker Identification Credentials (TWIC) under 49 C.F.R. Part 1572;

(c) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 C.F.R. Part 555;

(d) Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 C.F.R. Part 73;

(e) Hazardous Material security threat assessment for hazardous material endorsement to commercial driver's license under 49 C.F.R. Part 1572; and

(f) U.S. Customs and Border Protection's Free and Secure Trade (FAST) program.

NEW SECTION

WAC 246-237-031 Protection of information. (1) Each licensee who obtains background information on an individual under this chapter shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, their representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying un-

corted access to Category 1 or Category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(a) Upon the individual's written request to the licensee holding the data to disseminate the information contained in their file; and

(b) The recipient licensee verifies information such as name, date of birth, Social Security number, gender, and other applicable physical characteristics.

(4) The licensee shall make background investigation records obtained under this chapter available for examination by an authorized representative of the department to determine compliance with the applicable rules and laws.

(5) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, on an individual for three years from the date the individual no longer requires unescorted access to Category 1 or Category 2 quantities of radioactive material.

NEW SECTION

WAC 246-237-033 Access authorization program review. (1) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of this chapter and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically, at least annually, review the access program content and implementation.

(2) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition or conditions, and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) Review records must be maintained for three years.

NEW SECTION

WAC 246-237-041 Security program. (1) Applicability.

(a) Each licensee who possesses an aggregated Category 1 or Category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this chapter.

(b) An applicant for a new license, and each licensee who would become newly subject to the requirements of this chapter, upon application for modification of its license, shall implement the requirements of this chapter, as appropriate,

before taking possession of an aggregated Category 1 or Category 2 quantity of radioactive material.

(c) Any licensee who has not previously implemented the security orders or been subject to the provisions of WAC 246-237-041 through 246-237-057 shall provide written notification to the department at least ninety days before aggregating radioactive material to a quantity that equals or exceeds the Category 2 threshold.

(2) General performance objective. Each licensee shall establish, implement, and maintain a security program designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to Category 1 or Category 2 quantities of radioactive material.

(3) Program features. Each licensee's security program must include the program features, as appropriate, described in WAC 246-237-043 through 246-237-055.

NEW SECTION

WAC 246-237-043 General security program requirements. (1) Security plan.

(a) Each licensee identified in WAC 246-237-041(1) shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this chapter. The security plan must, at a minimum:

(i) Describe the measures and strategies used to implement the requirements of this chapter; and

(ii) Identify the security resources, equipment, and technology used to satisfy the requirements of this chapter.

(b) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(c) A licensee shall revise its security plan as necessary to ensure the effective implementation of department requirements. The licensee shall ensure that:

(i) The revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(ii) The affected individuals are instructed on the revised plan before the changes are implemented.

(d) The licensee shall retain a copy of the current security plan as a record for three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(2) Implementing procedures.

(a) The licensee shall develop and maintain written procedures that document how the requirements of this chapter and the security plan will be met.

(b) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(c) The licensee shall retain a copy of the current procedure as a record for three years after the procedure is no longer needed. Superseded portions of the procedure must be retained for three years after the record is superseded.

(3) Training.

(a) Each licensee shall conduct training to ensure those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) The licensee's security program and procedures to secure Category 1 or Category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

(ii) The responsibility to report promptly to the licensee any condition which causes or may cause a violation of department requirements;

(iii) The responsibility of the licensee to report promptly to the LLEA and licensee any actual or attempted theft, sabotage, or diversion of Category 1 or Category 2 quantities of radioactive material; and

(iv) The appropriate response to security alarms.

(b) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of Category 1 or Category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of Category 1 or Category 2 quantities of radioactive material.

(c) Refresher training must be provided at a frequency not to exceed twelve months and when significant changes have been made to the security program. This training must include:

(i) Review of the training requirements of this subsection and any changes made to the security program since the last training;

(ii) Reports on any relevant security issues, problems, and lessons learned;

(iii) Relevant results of department inspections; and

(iv) Relevant results of the licensee's program review and testing and maintenance.

(d) The licensee shall maintain records of the initial and refresher training for three years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(4) Protection of information.

(a) Licensees authorized to possess Category 1 or Category 2 quantities of radioactive material shall limit access to, and unauthorized disclosure of, their security plan, implementing procedures, and the list of individuals who have been approved for unescorted access.

(b) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

(c) Before granting an individual access to the security plan or implementing procedures, licensees shall:

(i) Evaluate an individual's need to know the security plan or implementing procedures; and

(ii) If the individual has not been authorized for unescorted access to Category 1 or Category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in WAC 246-237-025 (1)(b) through (g).

(d) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) The categories of individuals listed in WAC 246-237-029 (1)(a) through (m); or

(ii) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in WAC 246-237-025 (1)(b) through (g), has been provided by the security service provider.

(e) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

(f) Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

(g) When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must be password protected.

(h) The licensee shall retain as a record for three years after the document is no longer needed:

(i) A copy of the information protection procedures; and

(ii) The list of individuals approved for access to the security plan or implementing procedures.

NEW SECTION

WAC 246-237-045 LLEA coordination. (1) A licensee subject to this chapter shall coordinate, to the extent practicable, with a LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(a) A description of the facilities and the Category 1 and Category 2 quantities of radioactive materials along with a description of the licensee's security measures which have been implemented to comply with this chapter; and

(b) A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of Category 1 or Category 2 quantities of material.

(2) The licensee shall notify the department within three business days if:

(a) The LLEA has not responded to the request for coordination within sixty days of the coordination request; or

(b) The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(3) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for three years.

(4) The licensee shall coordinate with the LLEA at least every twelve months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

NEW SECTION

WAC 246-237-047 Security zones. (1) Licensees shall ensure that all aggregated Category 1 and Category 2 quantities of radioactive material are used or stored within licensee-established security zones. Security zones may be permanent or temporary.

(2) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(3) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(a) Isolation of Category 1 and Category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the Category 1 or Category 2 quantities of radioactive material within a security zone; or

(b) Direct control of the security zone by approved individuals at all times; or

(c) A combination of continuous physical barriers and direct control.

(4) For Category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(5) Individuals not approved for unescorted access to Category 1 or Category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

NEW SECTION

WAC 246-237-049 Monitoring, detection, and assessment. (1) Monitoring and detection.

(a) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries.

(b) Monitoring and detection must be performed by:

(i) A monitored intrusion detection system that is linked to an on-site or off-site central monitoring facility;

(ii) Electronic devices for intrusion detection alarms that will alert nearby facility personnel;

(iii) A monitored video surveillance system;

(iv) Direct visual surveillance by approved individuals located within the security zone; or

(v) Direct visual surveillance by a licensee designated individual located outside the security zone.

(c) A licensee subject to this chapter shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) For Category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(A) Electronic sensors linked to an alarm;

(B) Continuously monitored video surveillance; or

(C) Direct visual surveillance.

(ii) For Category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(2) Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(3) Personnel communications and data transmission. For personnel, and automated or electronic systems, supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

(a) Maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(b) Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(4) Response. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of Category 1 or Category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of Category 1 or Category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

NEW SECTION

WAC 246-237-051 Maintenance and testing. (1) Each licensee subject to this chapter shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable con-

dition and are capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this part must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed twelve months.

(2) The licensee shall maintain records of the maintenance and testing activities for three years.

NEW SECTION

WAC 246-237-053 Requirements for mobile devices.

Each licensee who possesses mobile devices containing Category 1 or Category 2 quantities of radioactive material must:

(1) Have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(2) For devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of the ignition key to meet this requirement.

NEW SECTION

WAC 246-237-055 Security program review. (1)

Each licensee shall be responsible for the continuing effectiveness of their security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of this chapter and that comprehensive actions are taken to correct any noncompliance which is identified. The review must include the radioactive material security program content and implementation. Each licensee shall periodically, at least annually, review the security program content and implementation.

(2) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition or conditions, and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition or conditions, including reassessment of the deficient areas where indicated.

(3) The licensee shall maintain the review documentation for three years.

NEW SECTION

WAC 246-237-057 Reporting of events. (1)

The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a Category 1 or Category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the department. In no case shall the notification to

the department be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(2) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of Category 1 or Category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than four hours after notifying the LLEA, the licensee shall notify the department.

(3) The initial telephonic notification required by subsection (1) of this section must be followed within a period of thirty days by a written report submitted to the department. The report must include sufficient information for department analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

NEW SECTION

WAC 246-237-071 Additional requirements for transfer of Category 1 and Category 2 quantities of radioactive material.

A licensee transferring a Category 1 or Category 2 quantity of radioactive material to a licensee of the department, the NRC, or an agreement state shall meet the license verification provisions listed in this section instead of those listed in WAC 246-232-080(4):

(1) Any licensee transferring Category 1 quantities of radioactive material to a licensee of the department, the NRC, or an agreement state, prior to conducting such transfer, shall verify with the department, the NRC's license verification system, or the license issuing authority that the transferee's license authorizes receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(2) Any licensee transferring Category 2 quantities of radioactive material to a licensee of the department, the NRC, or an agreement state, prior to conducting such transfer, shall verify with the department, the NRC's license verification system, or the license issuing authority that the transferee's license authorizes receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(3) In an emergency where the licensee cannot reach the department or the license issuing authority, and the NRC license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision or amendment number, issuing agency, expiration date and, for a Category 1 shipment, the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of NRC's license verification system or by contacting the department or the license issuing authority by the end of the next business day.

(4) The transferor shall keep a copy of the verification documentation as a record for three years.

NEW SECTION

WAC 246-237-073 Applicability of physical protection of Category 1 and Category 2 quantities of radioactive material during transit. (1) For shipments of Category 1 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in WAC 246-237-075 (1) and (5); 246-237-077; 246-237-079 (1)(a), (2)(a), and (3); and 246-237-081 (1), (3), (5), (7), and (8).

(2) For shipments of Category 2 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in WAC 246-237-075 (2) through (5); 246-237-079 (1)(b), (c), (2)(b), and (3); and 246-237-081 (2), (4), (6), (7), and (8). For those shipments of Category 2 quantities of radioactive material which meet the criteria of WAC 246-231-140(2), the shipping licensee shall also comply with the advance notification provisions of WAC 246-231-140.

(3) The shipping licensee shall be responsible for meeting the requirements of this chapter unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under this chapter.

(4) Each licensee that imports or exports Category 1 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in WAC 246-237-075 (1)(b) and (5); 246-237-077; 246-237-079 (1)(a), (2)(a), and (3); and 246-237-081 (1), (3), (5), (7), and (8) for the domestic portion of the shipment.

(5) Each licensee that imports or exports Category 2 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in WAC 246-237-079 (1)(b), (c), and (2)(b); and 246-237-081 (2), (4), (6), (7), and (8) for the domestic portion of the shipment.

NEW SECTION

WAC 246-237-075 Preplanning and coordination of shipment of Category 1 or Category 2 quantities of radioactive material. (1) Each licensee who plans to transport, or deliver to a carrier for transport, licensed material that is a Category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(a) Preplan and coordinate shipment arrival and departure times with the receiving licensee;

(b) Preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to:

(i) Discuss the state's intention to provide law enforcement escorts; and

(ii) Identify safe havens; and

(c) Document the preplanning and coordination activities.

(2) Each licensee who plans to transport, or deliver to a carrier for transport, licensed material which is a Category 2 quantity of radioactive material outside the confines of the

licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(3) Each licensee who receives a shipment of a Category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(4) Each licensee, who transports or plans to transport a shipment of a Category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to subsection (2) of this section, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(5) The licensee shall retain a copy of the documentation for preplanning and coordination, and any revision thereof, as a record for three years.

NEW SECTION

WAC 246-237-077 Advance notification of shipment of Category 1 quantities of radioactive material. As specified in subsections (1) and (2) of this section, each licensee shall provide advance notification to the department and the governor of a state, or the governor's designee, of the shipment of licensed material in a Category 1 quantity, through or across the boundary of the state, before transport, or delivery to a carrier for transport, of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(1) Procedures for submitting advance notification.

(a) The notification must be made to the department and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's web site at <http://nrc-stp.ornl.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Material Safety, State, Tribal and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. Notifications to the department must be made to the attention of the Director, Office of Radiation Protection.

(b) A notification delivered by mail must be postmarked at least seven days before transport of the shipment commences at the shipping facility.

(c) A notification delivered by any means other than mail must reach the department at least four days before transport of the shipment commences and must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

(2) Information to be furnished in advance notification of shipment. Each advance notification of shipment of Category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the Category 1 radioactive material;

(b) The license numbers of the shipper and receiver;

(c) A description of the radioactive material contained in the shipment, including the radionuclides and quantities;

(d) The point of origin of the shipment and the estimated time and date when shipment will commence;

(e) The estimated time and date the shipment is expected to enter each state along the route;

(f) The estimated time and date of arrival of the shipment at the destination; and

(g) A point of contact, with a telephone number, for current shipment information.

(3) Revision notice.

(a) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the department.

(b) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with subsections (2) and (3)(a) of this section. The licensee shall also immediately notify the department of any such changes.

(4) Cancellation notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the department and to the governor of each state or to the governor's designee previously notified. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification which is being canceled.

(5) Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

(6) Protection of information. State officials, state employees, and other individuals, whether or not licensees of the department, NRC, or an agreement state who receive schedule information of the kind specified in subsection (2) of this section shall protect that information against unauthorized disclosure as specified in WAC 246-237-043(4).

NEW SECTION

WAC 246-237-079 Requirements for physical protection of Category 1 and Category 2 quantities of radioactive material during shipment. (1) Shipments by road.

(a) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a Category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments twenty-four hours a day, seven days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a twenty-four hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(v) Develop written normal and contingency procedures to address:

(A) Notifications to the communication center and law enforcement agencies;

(B) Communication protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(C) Loss of communications; and

(D) Responses to an actual or attempted theft or diversion of a shipment.

(vi) Each licensee who makes arrangements for the shipment of Category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(b) Each licensee who transports Category 2 quantities of radioactive material shall maintain constant control or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(c) Each licensee who delivers to a carrier for transport, in a single shipment, a Category 2 quantity of radioactive material shall:

(i) Use carriers who have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers who maintain constant control or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers who have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(2) Shipments by rail.

(a) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a Category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement pre-planned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(ii) Ensure that periodic reports to the communications center are made at preset intervals.

(b) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a Category 2 quantity of radioactive material shall:

(i) Use carriers who have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers who maintain constant control or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers who have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(3) Investigations. Each licensee who makes arrangements for the shipment of Category 1 quantities of radioactive material shall immediately conduct an investigation upon discovery that a Category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of Category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

NEW SECTION

WAC 246-237-081 Reporting requirements. (1) The shipping licensee shall notify the appropriate LLEA and the department within one hour of its determination that a shipment of Category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by WAC 246-237-079(3), the shipping licensee will provide agreed upon updates to the department on the status of the investigation.

(2) The shipping licensee shall notify the department within four hours of its determination that a shipment of Category 2 quantities of radioactive material is lost or missing.

If, after twenty-four hours of the determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the department.

(3) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a Category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the department upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of Category 1 radioactive material.

(4) The shipping licensee shall notify the department as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a Category 2 quantity of radioactive material.

(5) The shipping licensee shall notify the department and the LLEA as soon as possible upon recovery of any lost or missing Category 1 quantities of radioactive material.

(6) The shipping licensee shall notify the department as soon as possible upon recovery of any lost or missing Category 2 quantities of radioactive material.

(7) The initial telephonic notification required by subsections (1) through (4) of this section must be followed within a period of thirty days by a written report submitted to the department by an appropriate method. A written report is not required for notifications of suspicious activities required by subsections (3) and (4) of this section. In addition, the licensee shall provide a copy of the written report to the department. The report must set forth the following information:

(a) A description of the licensed material involved, including kind, quantity, chemical and physical form;

(b) A description of the circumstances under which the loss or theft occurred;

(c) A statement of disposition, or probable disposition, of the licensed material involved;

(d) Actions that have been taken, or will be taken, to recover the material; and

(e) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(8) Subsequent to filing the written report, the licensee shall also report any additional substantive information about the loss or theft to the department within thirty days after the licensee learns of such information.

NEW SECTION

WAC 246-237-101 Form of records. Each record required by this chapter must be legible throughout the retention period specified by department rule. The record may be the original or a reproduced copy or a microform, provided the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability of producing

legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with, and loss of, records.

NEW SECTION

WAC 246-237-103 Record retention. Licensees shall maintain records required by this chapter for the period specified by the appropriate rule. If a retention period is not otherwise specified, these records must be retained until the department terminates the facility's license. All records

NEW SECTION

WAC 246-237-900 Appendix A: Table 1—Category 1 and Category 2 thresholds. Terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values provided for practical usefulness only.

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

Note: Calculations Concerning Multiple Sources or Multiple Radionuclides

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or exceeds the threshold and is thus subject to the requirements of this chapter.

I. If multiple sources of the same radionuclide or multiple radionuclides are aggregated at a location, the sum of the ratios of the total activity of each of the radionuclides must be determined to verify whether the activity at the location is less than the Category 1 or Category 2 thresholds of Table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable requirements of this chapter apply.

related to this chapter may be destroyed upon department termination of the facility license.

NEW SECTION

WAC 246-237-105 Inspections. (1) Each licensee shall afford the department, at all reasonable times, opportunity to inspect Category 1 or Category 2 quantities of radioactive material and the premises and facilities wherein the nuclear material is used, produced, or stored.

(2) Each licensee shall make available to the department for inspection, upon reasonable notice, records kept by the licensee pertaining to receipt, possession, use, acquisition, import, export, or transfer of Category 1 or Category 2 quantities of radioactive material.

II. First determine the total activity for each radionuclide from Table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the corresponding threshold activity from Table 1 in the denominator of the equation. Calculations must be performed in metric values (TBq) and the numerator and denominator values must be in the same units.

$$R_1 = \text{total activity for radionuclide 1}$$

$$R_2 = \text{total activity for radionuclide 2}$$

$$R_N = \text{total activity for radionuclide n}$$

AR_1 = activity threshold for radionuclide 1

AR_2 = activity threshold for radionuclide 2

AR_N = activity threshold for radionuclide n

$$\sum_1^n \left[\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \frac{R_n}{AR_n} \right] \geq 1.0$$

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

WSR 16-07-097
EMERGENCY RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 18, 2016, 10:41 a.m., effective March 18, 2016, 10:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends WAC 181-77-071 Draft error correction, adds residency to the list of certifications eligible for career and technical education (CTE) administrator certificate.

Citation of Existing Rules Affected by this Order: Amending WAC 181-77-071.

Statutory Authority for Adoption: RCW 28A.410.210.

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 certificates eligible for pursuing CTE administrative certificates include residency CTE certificates.

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

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

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

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

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

Date Adopted: March 17, 2016.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-11-053, filed 5/16/14, effective 6/16/14)

WAC 181-77-071 Certification of career and technical education administrative personnel. (1) Beginning September 1, 2014, a candidate is eligible for the initial career and technical education administrator certification if meeting one of the following:

(a) Currently holds a valid residency, continuing or professional administrator certificate; or

(b) Completion of three years of experience as a certificated career and technical education supervisor, career and technical education instructor, career and technical education counselor, or occupational information specialist.

(2) Initial certificate.

(a) The individual may apply for an initial career and technical administrator certificate upon:

(i) Completion of the state authorized career and technical education administrator internship program; or

(ii) Completion of a state approved college program for career and technical education administration.

(b) The initial career and technical education administrator certificate is valid for four years and may be renewed two times.

(3) Initial certificate renewal.

(a) In order to renew the initial career and technical education administrator certificate completion of at least six quarter hours of college credit or sixty continuing education credit hours since the initial certificate was issued or renewed is required.

(b) The initial renewal certificate is valid for three years and may be renewed one time.

(4) Continuing certificate. The continuing career and technical education administrator certificate is valid for five years.

(a) In order to receive the continuing career and technical education administrator certificate, in addition to the requirements for the initial certificate, at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate is required.

(b) Individuals shall provide as a condition for the issuance of a continuing certificate documentation of two years of career and technical administration with an authorized employer (i.e., school district(s) or skill center(s)).

(c) Individuals who hold the initial career and technical administrator certificate, but have not been employed in the role of career and technical education administrator, or cannot document two years of career and technical education administration, shall be eligible for a continuing certificate by the following:

(i) In addition to the requirements for the initial certificate at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate; and

(ii) The completion of requirements listed in subsection (2)(a)(i) or (ii) of this section since the issuance of the second initial certificate renewal and prior to the application for the continuing career and technical education administrator certificate.

(5) Continuing certificate renewal. The continuing career and technical education administrator certificate shall be renewed with the completion of fifteen quarter credits of college credit course work or the equivalent of one hundred fifty continuing education credit hours in career and technical education, or supervisory or managerial subjects, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates.

(6) Any person with a valid career and technical education administrator certificate issued prior to September 1, 2014, under previous standards of the professional educator standards board shall meet requirements of, and may apply for, the continuing career and technical education administrator certificate by the expiration date of the original certificate held. Upon issuance of the continuing career and technical education administrator certificate such person will be subject to continuing certificate renewal requirements of subsection (5) of this section.

WSR 16-07-106
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-51—Filed March 18, 2016, 1:58 p.m., effective March 18, 2016, 1:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000P and 220-52-04000Q; and amending WAC 220-52-040.

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

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

Reasons for this Finding: An emergency rule is needed to correct an error in the effective date in filing WSR 16-07-062. The Puget Sound commercial crab season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes outlined in the management plans.

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

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

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

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

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

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

Date Adopted: March 18, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04000R Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Effective immediately until further notice, Crab Management Region 3-1 and Region 3-3 are closed. Region 3-1 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B. Region 3-3 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29.

(2) Effective immediately, until further notice, Crab Management Region 2 East and Region 2 West are closed. Region 2 East includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East. Region 2 West includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25D, 25B and 26A West.

(3) Effective immediately, until further notice, Crab Management Region 3-2 is closed. Region 3-2 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25E, 25A and 23D.

NEW SECTION

WAC 220-52-04000S Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-52-040, WAC 220-52-043 and WAC 220-52-046, effective immediately until further notice, incidental catch may not be retained. It is unlawful to retain salmon, food fish, or any shellfish other than octopus and Tanner crabs (*Chionoecetes* spp.) that is taken incidental to any commercial crab fishing. Additionally, Tanner crabs may only be retained in Crab Region 1 (defined as all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B). Tanner crabs retained must be males with a minimum width of 4.5 inches across the widest point in the carapace.

REPEALER

The following sections of the Washington Administrative code are repealed:

WAC 220-52-04000P Commercial crab fishery—Unlawful acts (16-48)

WAC 220-52-04000Q Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (16-48)

WSR 16-07-111
RECISSION OF EMERGENCY RULES
TRANSPORTATION COMMISSION

[Filed March 21, 2016, 9:50 a.m.]

We need to rescind the emergency rule-making order WSR 16-07-068, filed March 16, 2016, due to a clerical error on the filing.

Reema Griffith
 Executive Director

Date Adopted: March 18, 2016.

Reema Griffith
 Executive Director

WSR 16-07-112
EMERGENCY RULES
TRANSPORTATION COMMISSION

[Filed March 21, 2016, 9:51 a.m., effective March 21, 2016, 9:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To modify the hours and days when tolling is in effect on the Interstate 405 express toll lanes between Bellevue and Lynnwood.

Citation of Existing Rules Affected by this Order: Amending WAC 468-270-077, 468-270-110 and 468-270-120; and new section WAC 468-270-078.

Statutory Authority for Adoption: RCW 47.56.850 and 47.56.880, 2016 supplemental transportation budget (ESHB 2524).

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: Legislative finding provided in the 2016 supplemental transportation budget, and further finding by the transportation commission, that to preserve the general welfare, the hours and days of operation when tolling is in effect for the express toll lanes on Interstate 405 must be further defined and adjusted. While the initial implementation of the express toll lanes has benefited many commuters, additional operational changes are needed to support effective use of this corridor, critical for the movement of people and goods in Washington state.

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 3, Repealed 0.

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

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

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

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

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-077 What are the toll rates for the I-405 express toll lanes? When tolling is in effect on the I-405 express toll lanes (~~(are in operation)~~), the *Good To Go!*TM toll rate schedule shall be a minimum toll rate of \$0.75 and a maximum toll rate of \$10.00. *Good To Go!*TM Pass toll rates shall vary in amount by time of day and level of traffic congestion, and will automatically adjust within the established toll schedule using dynamic tolling to ensure average vehicle speeds in the lanes above forty-five miles per hour at least ninety percent of the time.

The commission shall periodically review the *Good To Go!*TM toll rate schedule against traffic performance outlined in RCW 47.56.880 to determine if the *Good To Go!*TM toll rates are effectively maintaining travel time, speed, and reliability, and shall adjust the toll rate schedule as needed to maintain performance standards.

The toll rate for a Pay By Mail transaction is equal to the *Good To Go!*TM Pass toll rate plus \$2.00.

NEW SECTION

WAC 468-270-078 What are the hours that tolling will be in effect on the I-405 express toll lanes? Tolling will be in effect on the I-405 express toll lanes weekdays, Monday through Friday, from 5:00 a.m. to 7:00 p.m. (excluding the weekdays on which holidaysⁱ are observed).

When tolling is not in effect on the I-405 express toll lanes, including on weekends and holidaysⁱ, the lanes are open to all vehicles regardless of occupancy, and a transponder is not needed to travel toll-free.

ⁱ New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-110 What vehicles are exempt from paying tolls on the I-405 express toll lanes? When tolling is in effect on the I-405 express toll lanes, except as provided herein, all vehicles using the I-405 express toll lanes must pay the required toll. Only qualified vehicles may be exempt from paying tolls. The registered owner and operator of the qualified vehicle must comply with the requirements of the department in order to obtain the exemption. The following vehicles shall qualify for exemption:

- (1) Transit buses and vanpools as specified in RCW 47.56.880;
- (2) Carpools, as defined for the facility in WAC 468-270-120;
- (3) Motorcycles;
- (4) Washington state patrol vehicles directly providing service to the express toll lane facility;

(5) Department maintenance vehicles directly involved in roadway maintenance on the I-405 express toll lanes, including the department's incident response vehicles responding to incidents and WSDOT tow trucks;

(6) Authorized emergency vehicles on bona fide emergencies; and

(7) Tow trucks authorized by Washington state patrol responding to clear blocking vehicles from the toll facility.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-120 How many occupants are required to be considered an eligible carpool for toll exemption on I-405 express toll lanes? Between 5 a.m. to 9 a.m. and 3 p.m. to 7 p.m., Monday through Friday, (excluding the ((days)) weekdays on which holidaysⁱ are observed) you must have three or more occupants in your vehicle to qualify as a toll-free carpool. At all other times when tolling is in effect on the I-405 express toll lanes, you must have two or more occupants in your vehicle to qualify as a toll-free carpool. Occupancy requirements do not apply to vehicles that are otherwise exempt from tolls pursuant to WAC 468-270-110 or authorized as an HOV vehicle as defined in chapter 468-510 WAC.

ⁱ New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

WSR 16-07-139
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-52—Filed March 22, 2016, 3:41 p.m., effective March 22, 2016, 3:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1 and 5. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 22, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000M Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective 12:01 p.m. March 15 through 11:59 p.m. March 23, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 a.m. March 24 through 11:59 a.m. March 31, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(3) Effective 12:01 a.m. March 25 through 11:59 a.m. March 27, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-36000L Razor clams—Areas and seasons.
(16-44)

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. March 31, 2016:

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

WSR 16-07-155
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed March 23, 2016, 10:42 a.m., effective March 23, 2016, 10:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: New rules are needed to create a process to recall marijuana and marijuana products that pose a risk to public health and safety. This emergency rule establishes a recall process similar to the recall process used by other state and federal agencies for products that pose risks to public health and safety.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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

Reasons for this Finding: Marijuana and marijuana products sold in Washington state liquor and cannabis board licensed retail stores are a consumable product and it is important that they are safe for human consumption. In the event that product posing a risk to public health is discovered, regulations and a process need to be in place to allow for affected product to be identified and removed from the marketplace in a fast and efficient manner. The emergency rules are needed to ensure the public health, and safety of the citizens of Washington. Permanent rule making will also begin immediately for these rules.

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

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

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

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

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

Date Adopted: March 23, 2016.

Jane Rushford
Chairman

NEW SECTION

WAC 314-55-225 Marijuana recalls. (1) Definitions.

For the purposes of this section, the following definitions apply:

(a) "Affected product" means marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products subject to a recall.

(b) "Affected licensee" means a licensee whose marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products are subject to a recall. More than one licensee may be an affected licensee in a recall.

(2) Exempt market withdrawals.

(a) A licensee may withdraw from the market marijuana, usable marijuana, marijuana concentrates, or marijuana-

infused products by its own determination for reasons that do not pose a risk to public health and safety such as for aesthetic reasons or other similar deficiencies in product or packaging.

(b) If a licensee initiates a market withdrawal for a reason that does not pose a risk to public safety, the licensee must notify the WSLCB by contacting the local WSLCB enforcement officer assigned to the local area within forty-eight hours of beginning the market withdrawal. Licensees withdrawing marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products for reasons other than public health and safety under (a) and (b) of this subsection are exempt from the remaining requirements of this section.

(3)(a) **When a recall is required.** A recall is required when circumstances exist that pose a risk to public health and safety. Factors that contribute to a determination of a recall situation include, but are not limited to, the following:

(i) Evidence that pesticides not approved by the board were used or are present on marijuana plants; or

(ii) Evidence of another condition that poses a risk to public health or safety.

(b) Licensee-initiated recalls.

(i) If a licensee initiates a recall due to a condition that poses a risk to public safety and would make a recall appropriate under this subsection (3), the licensee must:

(A) Immediately notify the local WSLCB enforcement officer; and

(B) Secure, isolate, and prevent the distribution of all marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products that may have been exposed to the condition warranting the recall. The licensee is prohibited from destroying any affected product prior to notifying the WSLCB and coordinating with the local WSLCB officer on destruction activities.

(ii) If the WSLCB determines the licensee fails to engage in recall efforts that meet the urgency of the risk to public health and safety, the WSLCB may seek a board-directed recall as provided in this section depending on the circumstances.

(c) WSLCB investigation-initiated recalls.

(i) If the WSLCB determines that a recall is not appropriate after an investigation, the WSLCB enforcement division may release administrative holds placed on marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products as part of the investigation as appropriate, unless an administrative hold is necessary under a continuing investigation.

(ii) If the WSLCB determines that a recall is appropriate after an investigation, the WSLCB notifies the board and requests the board issue a recall. If the board issues a recall, the WSLCB notifies the affected licensee that is the source of the issue giving rise to a recall.

(d) **Recall plans.** An affected licensee must develop a recall plan in a timely manner that sets the procedures for the recall of affected product. If the affected licensee distributed affected product to consumers or to retailers, the affected licensee must immediately notify all licensees that received affected product, and issue a press release and other appropriate public notification to inform consumers of the recall and identifying information about the affected product recalled.

(i) A recall plan must include, at a minimum, the following:

(A) Designation of a member of the licensee's staff who serves as the licensee's recall coordinator;

(B) Procedures for identifying and isolating product to prevent or minimize its distribution to consumers;

(C) Procedures to retrieve and destroy product; and

(D) A communications plan to notify those affected by the recall, including:

(I) How the affected licensee will notify other licensees in possession of product subject to the recall; and

(II) The use of press releases and other appropriate notifications to ensure consumers are notified of the recall and affected product information if the affected product was distributed to consumers.

(ii) A recall must follow the procedures outlined in the recall plan unless otherwise agreed by the WSLCB and the licensee. The affected licensee must ensure recall procedures are conducted to maximize recall of affected product and minimize risks to public health and safety.

(e) **Destruction of affected product.** An affected licensee must coordinate destruction of affected product with the local WSLCB enforcement officer and allow WSLCB enforcement to oversee the destruction of affected product recalled to ensure the destruction of affected product that poses risks to public health and safety.

(f) **Recall reports and audit.** The affected licensee must track the total amount of affected product and the amount of affected product returned to the affected licensee as part of the recall effort. The affected licensee must report to the WSLCB periodically on the progress of the recall efforts. The periodic reports must occur at a minimum of once a week or as otherwise specified and agreed to by the WSLCB and the affected licensee in the recall plan.

(g) **Recall closure.** If the WSLCB determines that the recall efforts are successful and risks to public health and safety are no longer present, the WSLCB may recommend closure of the recall to the board.

(4) Board-directed recall.

(a) Upon the recommendation by the WSLCB enforcement division, the board may issue a directed recall if:

(i) The affected licensee does not comply with a recall under subsection (3) of this section;

(ii) The affected licensee does not comply with the recall plan or recall reporting requirements under subsection (3) of this section; or

(iii) The WSLCB enforcement division determines that affected product may be diverted or is being diverted from the licensed business, or another circumstance that makes the affected licensee's destruction of the product inadvisable or a risk to public health and safety.

(b) If the board issues a directed recall, the WSLCB will notify consumers of the recall and all licensees that may possess product affected by the recall if notice has not yet occurred.

(c) Under a directed recall, the WSLCB enforcement division may seek an order for destruction of the affected product from the board.

(i) If the board issues an order for destruction, the WSLCB enforcement division may seize and conduct the destruction of affected product.

(ii) An order for destruction will include notice to the licensee and opportunity for hearing before destruction, unless there is evidence of an immediate danger to public health, safety, or welfare to justify an immediate order for destruction, with an opportunity for an expedited hearing after the destruction.

(d) If a destruction order is issued and the WSLCB seizes product affected by the recall and conducts the destruction of the product, the affected licensee may be responsible for reimbursing the WSLCB for costs associated with product destruction.

(e) If the board finds that an immediate danger to the public health, safety, or welfare requires immediate WSLCB action, a licensee may also be subject to summary suspension under RCW 66.08.150(4).

(5) The WSLCB will maintain a recall web page on its web site of all current and closed recalls of record.