

WSR 17-17-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 2, 2017, 12:03 p.m., effective August 2, 2017, 12:03 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: Sets the initial 2017 fall season for nontreaty select area commercial fisheries. The preseason forecast for the Columbia River return of fall Chinook is six hundred thirteen thousand eight hundred fish. This forecast provides harvestable Chinook for commercial purposes. Harvest estimates for the seasons are well within ESA limits and sharing guidelines. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 27, 2017. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty

and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: August 2, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-358-03000G Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-338-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Deep River Select Area.

(a) Season:

Monday, Tuesday, Wednesday, and Thursday nights
 August 21-September 1

Monday, Tuesday, Wednesday, Thursday and Friday
 nights September 4-September 23

Monday, Tuesday, Wednesday, and Thursday nights
 September 25-October 13, 2017

Open hours are 7 PM to 7 AM through September 1, 6 PM to 9 AM from September 4 to 23, and 7 PM to 7 AM thereafter.

(b) **Area:** The Deep River Select Area. All waters from West Deep River Road bridge at the town of Deep River, downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4-inch through September 9 and 6-inch thereafter. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel (WAC 220-20-015(1)).

(2) Tongue Point/South Channel

(a) **Season:** Monday and Wednesday nights August 28-August 31

Monday, Tuesday, Wednesday, and Thursday nights September 4-October 27, 2017

Open Hours: 7 PM-7 AM through September 8 and 4 PM-10 AM thereafter.

(b) **Area:** The Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

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

(c) **Gear:** Gillnets. 6-inch maximum mesh size. Maximum net length of 250 fathoms. In the Tongue Point fishing area: weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel. In the South Channel fishing area: no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

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

(3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday and Wednesday nights August 28-August 31,

Monday, Tuesday, Wednesday, and Thursday nights September 4-October 27, 2017

Open Hours: 7 PM-7 AM through September 8 and 6 PM-10 AM thereafter.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 1/2-mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line

from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. The area within a 100-foot radius of the mouth of Big Creek is closed.

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

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

(4) Additional requirements for all Select Area commercial fisheries:

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-358-010.

(b) **ALLOWABLE POSSESSION:** Chinook, Coho, Pink and Sockeye salmon, white sturgeon and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The three white sturgeon possession and sales limit includes all Select Area fisheries.

(c) Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(5) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-353-180).

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

Reviser's note: The typographical 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 17-17-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed August 3, 2017, 10:18 a.m., effective August 3, 2017, 10:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends coastal commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000C; and amending WAC 220-340-420.

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 because the weekly landing limit is necessary to protect the coastal Dungeness crab resource by mitigating handling mortality from sorting soft shelled crab and is in conformity with

the coastal Dungeness crab summer fishery management plan. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 3, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-42000D Coastal crab fishery—Weekly trip limits Notwithstanding the provisions of WAC 220-340-420:

(1) Effective immediately until further notice, it is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 1,200 pounds taken during each of the following coastal crab accounting periods:

- August 6 - August 12, 2017
- August 13 - August 19, 2017
- August 20 - August 26, 2017
- August 27 - September 2, 2017
- September 3 - September 9, 2017
- September 10 - September 15, 2017

(2) Any crab taken prior to August 6, 2017, and not landed before 11:59 p.m. August 5, 2017, become part of the August 6 - August 12, 2017 accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-42000C Coastal crab fishery—Weekly trip limits. (17-139)

WSR 17-17-017 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed August 7, 2017, 3:56 p.m., effective August 7, 2017, 3:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea cucumber rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000A; and amending WAC 220-340-730.

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

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

Reasons for this Finding: This emergency rule closes the sea cucumber [cucumber] harvest in District 5, as the quota will be reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 7, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-73000B Commercial sea cucumber fishery Notwithstanding the provisions of WAC 220-340-730, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 Monday through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish/Shellfish areas of Sea Cucumber District 2 Monday through Friday of each week: 29, 25A, 25B, 25C, 25D, 25E, 23A, 23D, and 23C. Sea cucumber harvest is not allowed within a closure zone in Area 23C west of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude and east of a

line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 2,500 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-340-73000A Commercial sea cucumber fishery.
(17-177)

WSR 17-17-025
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed August 8, 2017, 12:55 p.m., effective August 8, 2017, 12:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-71-0105 to strike the term "willful" from the definitions list as a result of an order by the Division III Court of Appeals in *Crosswhite v. DSHS* invalidating the current definition of "willful."

Citation of Rules Affected by this Order: Amending WAC 388-71-0105.

Statutory Authority for Adoption: RCW 74.08.090.

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 Division III Court of Appeals invalidated the current definition of "willful" in WAC 388-71-0105. The removal of the current term is necessary to comply with the court's order.

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

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

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

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

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

Date Adopted: August 2, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-022, filed 2/8/16, effective 4/1/16)

WAC 388-71-0105 What definitions apply to adult protective services? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to adult protective services:

"**AL TSA**" means DSHS aging and long-term support administration.

"**Adult family home**" means a home or building licensed under chapter 70.128 RCW.

"**ALJ**" means an administrative law judge, an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DSHS employees or DSHS representatives.

"**APS**" means adult protective services.

"**Basic necessities of life**" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

"**BOA**" means the DSHS board of appeals. The board of appeals consists of lawyers who are members of the Washington State Bar Association. An ALJ's decision can be appealed to the board of appeals, allowing a level of review before an appeal to the court system may be considered.

"**DSHS**" means the department of social and health services.

"**Enhanced service facility**" means a home or building licensed under chapter 70.97 RCW.

"**Facility**" means a residence licensed as an assisted living facility under chapter 18.20 RCW, an adult family home under chapter 70.128 RCW, a nursing home under chapter 18.51 RCW, a soldier's home under chapter 72.36 RCW, a residential habilitation center under chapter 71A.20 RCW, an enhanced services facility under chapter 71.05 RCW, or any other facility or residential program licensed or certified by DSHS's aging and long-term support administration.

"**Final finding**" means a substantiated initial finding of abandonment, abuse, financial exploitation or neglect that:

(1) Has been upheld through the administrative appeal described in WAC 388-71-01205 through 388-71-01280, or

(2) Is not timely appealed to the office of administrative hearings. A final finding may be appealed to superior court and the court of appeals under the Administrative Procedure Act, chapter 34.05 RCW.

"**Intermediate care facility for individuals with intellectual disabilities (ICF/IID)**" means a facility certified under 42 C.F.R. Part 483, Subpart I.

"**Legal representative**" means a guardian appointed under chapter 11.88 RCW or an attorney-in-fact under chapter 11.94 RCW.

"**Nursing Assistant**" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or "medicaid-certified nursing facility" means a nursing home licensed under chapter 18.51 RCW, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the federal Social Security Act (42 U.S.C. § 1396r). All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds may also be certified to provide medicare skilled nursing facility services.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Person with a duty of care" includes, but is not limited to, the following:

(1) A guardian appointed under chapter 11.88 RCW; ~~((or))~~

(2) A person named in a durable power of attorney as the attorney-in-fact as defined under chapter 11.94 RCW ~~((-)); or~~

(3) A person providing the basic necessities of life to a vulnerable adult where:

(a) The person is employed by or on behalf of the vulnerable adult; or

(b) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

"Personal aide" as found in RCW 74.39.007.

"Self-directed care" as found in RCW 74.39.007.

"Skilled nursing facility (SNF)" or "medicare-certified skilled nursing facility" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the federal Social Security Act (42 U.S.C. § 1395i-3).

"Substantiated initial finding" means a determination made by the department upon investigation of an allegation of abandonment, abuse, financial exploitation, neglect, or self-neglect that more likely than not occurred.

~~("Willful" means the nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause harm, injury or a negative outcome.))~~

WSR 17-17-027

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed August 8, 2017, 2:13 p.m., effective August 9, 2017]

Effective Date of Rule: August 9, 2017.

Purpose: Amend commercial shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000G; and amending WAC 220-340-520.

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

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

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

Reasons for this Finding: The 2017 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes the pot fishery season for spot shrimp in Catch Area 25A, as the quota will be reached; and (2) implements a spot shrimp weekly limit of six hundred pounds in all areas, with the exception of Shrimp Management Area 1A where a three hundred pound weekly limit is implemented. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 8, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-52000H Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective August 9, 2017 until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 2W, 3 and 5 are open to the harvest of all shrimp species, effective August 9, 2017 until further notice, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 2W and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E and 25A are closed to the harvest of spot shrimp.

(iii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all species other than spot shrimp.

(b) Effective August 9, 2017 until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per week from Shrimp Management Area 2W.

(c) Effective August 9, 2017 until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per week, with the following exception:

a. It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in Shrimp Management Area 1A.

(d) Effective August 9, 2017 until further notice, the spot shrimp catch accounting week is Wednesday through Tuesday.

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(f) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective August 9, 2017 until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open.

(d) That portion of Catch Area 21A within SMA 1B is open.

(e) Catch Area 20A is open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 9, 2017:

WAC 220-340-52000G Puget Sound shrimp pot and beam trawl fishery—Season. (17-176)

WSR 17-17-033
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed August 9, 2017, 12:54 p.m., effective August 9, 2017, 12:54 p.m.]

Effective Date of Rule: Immediately upon filing.

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

readopted to maintain the requirements by emergency rule until permanent rules on this topic become effective on August 31, 2017.

Citation of Rules Affected by this Order: New WAC 314-55-1025 and 314-55-1035.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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

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

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

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

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

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

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

Date Adopted: August 9, 2017.

Jane Rushford
Chair

NEW SECTION

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

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

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

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

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a

laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

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

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

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

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

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

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

(6) If the laboratory fails to achieve a passing score on at least eighty percent of the analytes in any proficiency test, the test is considered a failure. If the PT provider provides a pass/fail on a per analyte basis but not on the overall round of PT the lab participates in, the pass/fail evaluation for each analyte will be used to evaluate whether the lab passed eighty percent of the analytes. If the PT provider does not provide individual acceptance criteria for each analyte, the following criteria will be applied to determine whether the lab achieves a passing score for the round of PT:

(a) +/- 30% recovery from the reference value for residual solvent testing; or

(b) +/- 3 z or 3 standard deviations from the reference value for all other fields of testing.

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

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

(9) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to, adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

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

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

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

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

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

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

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

NEW SECTION

WAC 314-55-1035 Laboratory certification—Suspension and revocation. (1) The board may summarily suspend or revoke the certification of any lab certified under WAC 314-55-0995 for any of the following reasons:

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

(b) The laboratory owner or science director aids, abets, or permits the violation of any provision of chapters 314-55 WAC, 69.50 RCW, 69.51A RCW, or Title 9 or 9A RCW related to the operations of the laboratory, or the laboratory owner or science director permits laboratory staff to do so.

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

(i) On the application for certification;

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

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

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

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

(f) The laboratory staff denies entry to any employee of the WSLCB or WSLCB's vendor during normal business hours for an on-site assessment or inspection, as required by WAC 314-55-0995, 314-55-102, 314-55-1025, or 314-55-103.

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

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

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

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

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

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

(i) First violation: Ten-day suspension of the lab's certification or until the lab corrects the violation leading to the suspension, whichever is longer.

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

(iii) Third violation within a three-year period: Revocation of the lab's certification.

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

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

Purpose: Emergency rules are needed to maintain action levels for pesticide residue for marijuana and marijuana products. This emergency rule continues pesticide action levels as previously adopted by emergency rule until permanent rules on this subject can take effect on August 31, 2017.

Citation of Rules Affected by this Order: New WAC 314-55-108.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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

Reasons for this Finding: Marijuana and marijuana products sold in WSLCB licensed retail stores are a consumable product and it is important that they are safe for human consumption. Action levels for disallowed pesticides are needed to establish a point at which a marijuana sample fails quality assurance testing and may be subject to destruction or a recall. Pesticide action levels are standard in the food industry and other products meant for human consumption.

Currently, in permanent rules, there is a default zero tolerance action level for pesticides not allowed for use in marijuana production. This level is not workable or supported by science as many of the chemicals in pesticides are found in the natural environment and laboratories cannot test down to zero levels. Without action levels, there are risks to marijuana licensees' solubility should pesticides be identified even at extremely low levels, which would make those products potentially subject to destruction or recall.

Action levels for disallowed pesticides does not negate prohibitions against the use of such pesticides. Action levels do, however, account for the instance in which a producer has not used the disallowed pesticide, such as cross-contamination or residual pesticides from former farms on the land. Conversely, even if the producer does not use a disallowed pesticide on marijuana that later tests to have higher levels than the action levels established in this emergency rule, consumer safety will be protected in ensuring that product will not enter the marketplace. Additionally, with medical marijuana being folded into the regulated retail market, action levels are necessary since pesticide testing will be required for medical marijuana. WSLCB is considering mandatory testing of pesticides on recreational marijuana as well, however action levels are still necessary for random testing of marijuana and investigations into whether disallowed pesticides were used in marijuana production or marijuana should be recalled to avoid risks to consumers.

In the event that product is tested at levels higher than the action levels for disallowed pesticides, the lot from which the sample was derived from will fail quality assurance testing or be subject to a recall. WSLCB has previously adopted procedures for a recall of marijuana where the product will be identified and removed from the marketplace.

This emergency rule is needed to ensure the public health and safety of the citizens of Washington and the protection of licensees. WSLCB researched other jurisdictions' regulations and consulted with the Washington state department

WSR 17-17-034

EMERGENCY RULES

LIQUOR AND CANNABIS

BOARD

[Filed August 9, 2017, 12:55 p.m., effective August 9, 2017, 12:55 p.m.]

Effective Date of Rule: Immediately upon filing.

ment of agriculture, department of ecology, and department of health as well as laboratories and marijuana licensees in developing this emergency rule. The action levels established in this emergency rule are based on the action levels adopted by Oregon and supported by a technical paper from the Oregon Health Authority. Permanent rule making is underway and WSLCB will continue to work on this issue to consider whether changes will be needed in permanent rule making.

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

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

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

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

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

Date Adopted: August 9, 2017.

Jane Rushford
Chair

NEW SECTION

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of marijuana, and they must be registered by the Washington state department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if the WSLCB, WSDA, other designee of the WSLCB, or certified lab identifies a pesticide that is not allowed under subsection (1) of this section and is above the action levels provided in subsection (3) of this section, that lot or batch from which the sample was deducted has failed quality assurance testing and may be subject to a recall as provided in WAC 314-55-225.

(3) The action levels for pesticides are provided in the table below. The action level for all other pesticides that are not listed in the table below or not allowed under subsection (1) of this section is 0.1 ppm.

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	1
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	121-75-5	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclbutrazol	76738-62-0	0.4
Permethrins ^a	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide ^b	51-03-6	2
Prallethrin	23031-36-9	0.2

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins ^{bc}	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

^aPermethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8 respectively).

^bAction level applies to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.

^cPyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-1-2 respectively).

(4) Except as otherwise provided in this section, licensed marijuana producer or processor that provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087. A licensee's sample that does not test above the pesticide action levels under this section where test results show the presence of a pesticide that is not allowed under subsection (1) of this section may still be subject to an administrative violation if the disallowed pesticide was applied.

(5) Except as otherwise provided in this section, a licensed marijuana producer or processor which provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087.

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest.

(7) Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the mari-

juana product must be disclosed to a licensed retailer or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section and WAC 314-55-102.

(8) Pursuant to WAC 314-55-102, upon request a marijuana licensee must disclose and make available all quality assurance tests and retest results for the lot or batch of usable marijuana, marijuana concentrates, or marijuana-infused products to the marijuana licensee or retail customer who is considering purchasing the usable marijuana, marijuana concentrates, or marijuana-infused products.

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

WSR 17-17-035
EMERGENCY RULES
OFFICE OF THE
LIEUTENANT GOVERNOR

[Filed August 9, 2017, 12:58 p.m., effective August 9, 2017, 12:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The Public Records Act is chapter 42.56 RCW. RCW 42.56.120 as amended effective July 23, 2017 (section 3, chapter 304, Laws of 2017), requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The new emergency rule, WAC 44-06-092, makes those findings. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. This rule also provides for fee waivers.

Purpose: The purpose of the rule is to implement the state legislature's new Public Records Act requirement and provide the necessary findings so that the office of the attorney general may begin using the amended statutory default fee schedule on July 23, 2017, and waive copy fees under listed circumstances effective July 23, 2017. The additional purpose of the rule is to explain procedures for payment.

Citation of Rules Affected by this Order: New WAC 241-10-050.

Statutory Authority for Adoption: RCW 46.56.040.

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

Reasons for this Finding: The office of the lieutenant governor finds good cause that new emergency rule, WAC 241-10-050, is necessary for the following reasons. The Public Records Act is chapter 42.56 RCW. The 2017 legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, to require that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The office is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in WAC 44-06-092. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. In order to waive copy fees for records responsive to a request submitted on or after July 23, 2017, WAC 241-10-050 describes the circumstances under which the office will waive copy fees.

There is insufficient time under permanent rule-making procedures for the office to bring its copy fees into statutory compliance as directed by the legislature. The office also finds that it is in the general welfare and the public interest, and benefits requesters and the agency, to adopt the emergency rule in order to preserve and update fees in accordance with the legislatively adopted schedule, allow for fee waivers, and provide payment procedures. Therefore, emergency rule making is necessary. The office intends to proceed with permanent rule making on these subjects in the near future.

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

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

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

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

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

Date Adopted: August 9, 2017.

Cyrus Habib
Lieutenant Governor

NEW SECTION

WAC 241-10-050 Copying fees—Payments. (1) The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW and received on or after August XX, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons: (i) The office does not have the resources to conduct a study to determine all its actual copying costs; (ii) to conduct such a

study would interfere with other essential agency functions; and, (iii) through the 2017 legislative process, the public and requesters have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The office will charge for customized services pursuant to 42.56.120(3). Under RCW 42.56.130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requester under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at www.atg.wa.gov.

(4) Requesters are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions.

(a) It is within the discretion of the public records officer to waive copying fees when: (i) all of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requester will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requester of when payment is due.

(7) Payment should be made by check or money order to the Office of the Lieutenant Governor. The office prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requester fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

WSR 17-17-046

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-192—Filed August 10, 2017, 2:36 p.m., effective August 18, 2017]

Effective Date of Rule: August 18, 2017.

Purpose: Amend recreational fishing rules on the Snake River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000K; and amending WAC 220-312-050.

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

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

Reasons for this Finding: This emergency rule is necessary because the 2017 Columbia River forecasted return of upriver bright adults is two hundred sixty thousand, with a significant portion of these fish expected to return to the Snake River. Retention of hatchery fall Chinook is not expected to increase impacts to Endangered Species Act listed wild fall Chinook. Therefore, adipose clipped hatchery fall Chinook and all jack Chinook can be retained in the Snake River. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 10, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-05000K Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050,

(1) **Snake River** - Effective August 18, 2017 through October 31, 2017, open for salmon from the Burbank-to-Pasco railroad bridge at Snake River mile 1.25 upstream to the Oregon State line:

(a) Daily limit of six adipose fin clipped Chinook adults (24 inches in length and larger), and 6 jack Chinook (less than 24 inches). Minimum size for Chinook is 12 inches.

(b) Anglers must cease fishing for salmon and steelhead once either the daily limit for adult salmon or steelhead has been retained.

(c) Release all wild adult Chinook.

(d) Barbless hooks are required when fishing for Chinook or steelhead.

(e) It is unlawful to remove any Chinook or steelhead from the water unless it is retained as part of the daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2017:

WAC 220-312-05000K Freshwater exceptions to statewide rules—Eastside.

WSR 17-17-048

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed August 10, 2017, 4:12 p.m., effective August 10, 2017, 4:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-873A WAC, Hospital pharmacy associated clinics, the pharmacy quality assurance commission (commission) is establishing standards supporting the regulatory, inspection, and investigation of pharmacy services provided in individual practitioner offices and multi-practitioner clinics owned and operated by a hospital based on a level of risk and the type of pharmacy services provided at a particular location. This filing replaces emergency rules filed as WSR 17-09-025 on April 12, 2017.

Citation of Rules Affected by this Order: New WAC 246-873A-010, 246-873A-020, 246-873A-030, 246-873A-040, 246-873A-050, 246-873A-060, 246-873A-070, 246-873A-080, 246-873A-090, and 246-873A-095.

Statutory Authority for Adoption: RCW 18.64.005.

Other Authority: SSB 6558 (chapter 118, Laws of 2016).

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: SSB 6558 amended RCW 18.64.043 directing the commission to adopt emergency rules to implement the bill and to keep the emergency rules in effect until permanent rules are adopted. The standards in this emergency rule have not changed from the previous emergency rule. The commission has filed a preproposal statement of inquiry, WSR 16-16-025, and has initiated stakeholder work on developing proposed 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 10, Amended 0, Repealed 0.

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: August 10, 2017.

Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

Chapter 246-873A WAC

HOSPITAL PHARMACY ASSOCIATED CLINICS

NEW SECTION

WAC 246-873A-010 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly indicates otherwise:

(1) "Clinic" means a facility that is established primarily to furnish outpatient health care services by an individual or group of practitioners.

(2) "Commission" means the Washington state pharmacy quality assurance commission.

(3) "Compounding" means the preparation or combining of any two or more active ingredients or components into a drug product as the result of a practitioner's prescription drug order or initiative based on the practitioner, patient, and pharmacist relationship in the course of professional practice or for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns. Compounding does not include mixing, reconstituting or other such acts that are performed in accordance with the directions contained in approved labeling provided by the product's manufacturer.

(4) "Hospital pharmacy associated clinic" or "HPAC" means an individual practitioner's office or multipractitioner clinic owned, operated, or under common control of a parent hospital or health system, where the physical address of the office or clinic is identified on a hospital pharmacy license.

(5) "Parent hospital pharmacy" means a hospital pharmacy licensed under chapter 70.41 RCW, adding hospital pharmacy associated clinics to their hospital pharmacy license in accordance with chapter 18.64 RCW and this chapter.

(6) "Practice of pharmacy" shall have the same meaning as RCW 18.64.011.

(7) "Practitioner" has the same meaning as RCW 18.64.011, and those individuals authorized to possess drugs.

(8) "Prescription" has the same meaning as RCW 18.64.011.

(9) "Responsible manager" has the same meaning as WAC 246-869-070.

(10) "Transfer" means to move drugs from the parent hospital pharmacy to the hospital pharmacy associated clinic.

NEW SECTION

WAC 246-873A-020 Hospital pharmacy associated clinic—Licensing. (1) New hospital pharmacy license. A parent hospital pharmacy applying for a new hospital pharmacy

license or submitting a change in hospital ownership must:

(a) Submit a full application to the department and identify any HPACs to be included under the hospital pharmacy license, along with the applicable fees established under WAC 246-907-030 and 246-907-040; and

(b) Pass an inspection by a commission pharmacist investigator in accordance with this chapter.

(2) Current hospital pharmacy license holders. The parent hospital pharmacy must notify the commission in writing of any change of HPAC ownership, location of HPACs, and addition or removal of HPACs from the parent hospital pharmacy license.

(a) Adding HPACs. A parent hospital pharmacy may add HPACs on a hospital pharmacy license at any time and must file a hospital pharmacy license addendum with the commission along with applicable fees set forth in WAC 246-907-0302. Added HPACs are subject to inspection in accordance with this chapter.

(b) Removing HPACs. A parent hospital pharmacy removing HPACs from the parent hospital pharmacy license must comply with WAC 246-873A-095.

(3) HPAC locations are identified as follows:

(a) Category 1 HPAC: Receives drugs transferred from the parent hospital pharmacy to the HPAC, and does not perform sterile or nonsterile compounding of drugs. This does not infer that pharmaceutical services are provided at this location.

(b) Category 2 HPAC: Receives drugs transferred from the parent hospital pharmacy to the HPAC, and performs sterile or nonsterile compounding of drugs.

(4) A HPAC licensed under the parent hospital pharmacy license must obtain a Drug Enforcement Administration (DEA) registration for purposes of possessing controlled substances.

NEW SECTION

WAC 246-873A-030 Responsible manager. The responsible manager shall comply with the requirements of WAC 246-873-080 (3), (4), (7) and (8).

NEW SECTION

WAC 246-873A-040 Physical requirements of a HPAC. Physical requirements must be consistent with the applicable subsections of WAC 246-873-070 according to the HPAC category type.

NEW SECTION

WAC 246-873A-050 HPAC drug transfer and control. The following apply to both Category 1 and Category 2 HPACs:

(1) General drug transfer. A licensed hospital pharmacy is permitted without a wholesaler license to engage in intra-company sales, being defined as any transaction or transfer between any division, subsidiary, parent company, affiliated company, or related company under common ownership and control of the corporate entity;

(2) Patient specific drugs. A licensed hospital pharmacy dispensing appropriately labeled, patient specific drugs to a HPAC licensed under the parent hospital pharmacy may do so only pursuant to a valid patient order or prescription and the order or prescription information is authenticated in the medical record of the patient to whom the legend drug or controlled substance will be provided according to the policy and procedures of the parent hospital pharmacy.

(3) Storage. The parent hospital pharmacy's policy and procedures must specify HPAC drug storage parameters consistent with WAC 246-869-150.

(4) Drug samples. Nothing in this chapter prohibits a practitioner from dispensing drug samples in accordance with state and federal laws and regulations.

(5) Controlled substance accountability. The responsible manager of the parent hospital pharmacy must include accountability standards of controlled substances consistent with WAC 246-873-080(7) in the HPAC policies and procedures.

(6) Drug recall. A recall procedure must be in place to assure that potential harm to patients within a HPAC is prevented and that all drugs included on the recall are returned to the parent hospital pharmacy for proper disposition.

NEW SECTION

WAC 246-873A-060 Labeling. (1) Labels on medications dispensed to HPAC patients, including drug samples, must meet the requirements of RCW 69.41.050. This does not apply to HPAC administered medications.

(2) Parenteral and irrigation solutions in Category 2 HPACs. When drugs are added to intravenous solutions, a suitable label shall be affixed to the container and at a minimum should include the following:

- (a) The name of the patient;
- (b) Name and amount of drug(s) added;
- (c) Beyond use date; and
- (d) Initials of the personnel who prepared and checked the solution.

NEW SECTION

WAC 246-873A-070 Records. All transaction and inventory records must be maintained in compliance with applicable sections in chapter 246-875 WAC according to the HPAC category type.

NEW SECTION

WAC 246-873A-080 Administration of drugs. (1) Drugs administered in a HPAC shall only be administered by Washington state credentialed personnel, acting within their scope of practice, in accordance with state and federal laws and regulations governing such acts.

(2) Drugs must be administered only upon the valid order of a practitioner, as defined in RCW 69.50.101, who is licensed to prescribe legend drugs or controlled substances and who has been granted clinical privileges to write such orders.

(3) All medications administered to HPAC patients must be recorded in the patient's medical record.

NEW SECTION

WAC 246-873A-090 Inspections of HPAC. The commission shall conduct inspections of HPACs in conjunction with associated hospital pharmacy inspections under WAC 246-869-190 and consistent with WAC 246-869-110. All deficiencies shall be noted on the hospital pharmacy inspection form.

(1) A representative sample of Category 1 HPACs not performing compounding are subject to inspection as determined by the commission investigator. Category 1 HPACs will be inspected to the standards established in this chapter.

(2) All Category 2 HPACs performing on-site sterile or nonsterile compounding will be inspected. Category 2 HPACs will be inspected to standards established in this chapter, RCW 18.64.270, and chapter 246-878 WAC.

NEW SECTION

WAC 246-873A-095 Removal of HPAC from a hospital pharmacy license. (1) The parent hospital pharmacy shall notify the commission of the removal of a HPAC from the hospital pharmacy license no later than fifteen days prior to the anticipated date of removal or closing of the HPAC. This notice must be submitted in writing and shall contain all of the following information:

(a) The date the HPAC will no longer be listed under the parent hospital pharmacy;

(b) The names and addresses of the person(s) who will have custody of the prescription files, the repackaging records, and the controlled substances inventory records of the HPAC being removed from the parent hospital pharmacy license or closed; and

(c) The names and addresses of any persons who will acquire any of the legend drugs, including controlled substances, from the HPAC.

(2) A written statement containing the following information must be filed with the commission no later than fifteen days after the planned removal of the HPAC:

(a) Confirmation that all legend drugs have been transferred to an authorized person(s) or destroyed. If the legend drugs were transferred, the names and addresses of the person(s), or alternate HPAC location(s) to whom they were transferred;

(b) If controlled substances were transferred, a list of the name(s) and address (or addresses) of the DEA registrant(s) to whom the substances were transferred, the substances transferred, the amount of each substance transferred, and the date on which the transfer took place;

(c) Confirmation that the DEA registration and all unused DEA 222 forms (order forms) were returned to the DEA;

(d) Confirmation that all labels and blank prescriptions in the possession of the HPAC were destroyed or otherwise accounted for; and

(e) Confirmation that all signs and symbols indicating the ownership or affiliation to the parent hospital pharmacy have been removed.

WSR 17-17-050
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed August 11, 2017, 7:31 a.m., effective August 22, 2017]

Effective Date of Rule: August 22, 2017.

Purpose: WAC 458-20-19404 (Rule 19404) explains how financial institutions must apportion gross income when they engage in business both within and outside the state. RCW 82.04.460(2) provides that the department adopt a rule for the apportionment of income of financial institutions that is consistent with the model adopted by the Multistate Tax Commission (MTC). Rule 19404 has been amended to remain consistent with MTC's change in its model method of apportionment for financial institutions that becomes effective January 1, 2016.

There are no changes from the previous emergency rule filed April 24, 2017, under WSR 17-10-017.

Citation of Rules Affected by this Order: Amending WAC 458-20-19404 Financial institutions—Income apportionment.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

Other Authority: RCW 34.05.350, 82.04.460(2).

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

Reasons for this Finding: Taxpayers engaging in business as a financial institution both within and outside the state are required to apportion their income. Consistent with MTC requirements, the apportionment methodology for financial institutions changed on January 1, 2016. Taxpayers need information and reporting instructions on how to properly apportion their income. An emergency adoption of this rule is necessary because the permanent rule cannot be adopted at this time.

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

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

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

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

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

Date Adopted: August 11, 2017.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-04-004, filed 1/22/15, effective 2/22/15)

WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.

(a) Effective June 1, 2010, ~~((section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's))~~ Washington changed its method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) RCW 82.04.460(2) requires the department, to the extent feasible, to adopt the multistate tax commission's recommended formula for apportionment and allocation of net income for financial institutions, with the exceptions that the definition of financial institution in the appendix to the recommended formula is advisory only and only the receipts factor will be used to apportion income.

(c) On July 29, 2015, the multistate tax commission approved amendments to its recommended formula for the apportionment and allocation of net income of financial institutions including amendments to how the receipts factor is calculated. The amendments are effective for tax years starting on or after January 1, 2016.

(d) This rule applies to the apportionment of income taxable under RCW 82.04.290 for periods beginning January 1, 2016.

(e) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401((;)) Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective after May 31, 2010.

(ii) WAC 458-20-19402((;)) Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective after May 31, 2010.

(iii) WAC 458-20-19403((;)) Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194((;)) Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-14601((;)) Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

~~((;))~~ (f) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(2) Apportionment ~~(and allocation)~~.

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. ~~((Any other))~~ Apportionable income that is not taxable under RCW 82.04.-290 must be apportioned pursuant to WAC 458-20-

19402((§)) Single factor receipts apportionment—Generally or WAC 458-20-19403((§)) Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401((§)) Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not ~~((includable))~~ from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) All ~~((apportionable income))~~ service and other activities income, regardless of where that income is attributed, shall be apportioned to this state by multiplying such income, less any deductions or exemptions authorized under chapter 82.04 RCW, by the apportionment((§)) percentage. The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. ~~((Persons should))~~ For further guidance on the requirements of each accounting method refer to WAC 458-20-197((§)) When tax liability arises and WAC 458-20-199((§)) Accounting methods ~~((for further guidance on the requirements of each accounting method))~~.

(d) Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

~~((§))~~ (e) Interest and penalties on reconciliations under ~~((§))~~ (d) of this subsection apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

~~((§))~~ (f) If the ~~((allocation and))~~ apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the

department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement ~~((and/))~~ or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) **"Card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(d) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

~~((§))~~ (e) **"Credit card"** means ~~((credit, travel or entertainment card.~~

~~((§))~~ (e) **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

~~((§))~~ (f) a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(f) **"Debit card"** means a card, or other means of providing information, that enables the holder to charge the cost

of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

~~((g))~~ **(g) "Department"** means the department of revenue.

~~((h))~~ **(h) "Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

~~((i))~~ **(i) "Financial institution"** means:

~~((i))~~ Any corporation or other business entity ~~((chartered))~~ authorized under ((Title 30)) Title 30A, 31, 32, or 33 RCW((; or)) to engage in business in Washington, provided that persons authorized to act as a loan servicer pursuant to chapter 31.04 RCW or as a check casher or check seller pursuant to chapter 31.45 RCW shall not be considered a financial institution solely on that basis; or

~~((ii))~~ Registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

~~((iii))~~ **(iii)** A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

~~((iv))~~ **(iv)** A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

~~((v))~~ **(v)** Any bank or thrift institution incorporated or organized under the laws of any state;

~~((vi))~~ **(vi)** Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

~~((vii))~~ **(vii)** Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

~~((viii))~~ **(viii)** Any credit union, other than a state or federal credit union exempt under state or federal law;

~~((ix))~~ **(ix)** A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

~~((x))~~ **(j) "Gross income of the business," "gross income," or "income":**

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose ~~((of (3)(i)))~~ of this subsection, affiliated means the affiliated person and the financial institution are under common control. Control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies

of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

~~((k))~~ **(k) "Interest, fees, and penalties"** means any fees related to a loan, credit card, or other extension of credit and includes any fees charged a prospective borrower prior to funding of a loan regardless of whether the loan is eventually funded.

~~((l))~~ **(l) "Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

~~((m))~~ **(m) "Loan secured by real property"** means that more than fifty percent ((or more)) of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

~~((n))~~ **(n) "Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any card holder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its card holder.

~~((o))~~ **(o) "Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

~~((p))~~ **(p) "Person"** has the meaning given in RCW 82.04.030.

~~((q))~~ **(q) "Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

~~((r))~~ **(r) "Service and other activities income"** means the gross income of the business taxable under RCW 82.04.-290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state ~~((, less the exemptions and deductions allowable under chapter 82.04 RCW)).~~

~~((s))~~ **(s) "State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any

territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

~~((+))~~ (t) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

~~((+))~~ (u) "Taxable in another state" means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state ~~((has))~~ would have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

(iii) For purposes of ~~((+ of))~~ this subsection (3)(u), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

~~((+))~~ (v) "Taxable period" means the calendar year during which tax liability is incurred.

(4) Receipts factor.

(a) General. The receipts factor is a fraction, the numerator of which is the ~~((apportionable))~~ service and other activities income of the taxpayer in this state during the taxable period and the denominator of which is the ~~((apportionable))~~ service and other activities income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest ~~((from))~~, fees, and penalties imposed in connection with loans secured by real property.

(i) The numerator of the receipts factor includes interest ~~((and))~~, fees ~~((or))~~ and penalties ~~((in the nature of interest from))~~ imposed in connection with loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest ~~((from))~~, fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor includes interest ~~((and))~~, fees ~~((or))~~, and penalties ~~((in the nature of interest from))~~ imposed in

connection with loans not secured by real property if the borrower is located in this state.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection ~~((+))~~ and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans not secured by real property.

(e) Receipts from ~~((credit card receivables))~~ fees, interest, and penalties charged to card holders. The numerator of the receipts factor includes fees, interest, and ~~((fees or))~~ penalties ~~((in the nature of interest from credit card receivables and income from fees))~~ charged to card holders ~~((, such as))~~ including, but not limited to, annual fees and overdraft fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest ~~((and fees or penalties in the nature of interest from credit card receivables and fees))~~, fees, and penalties charged to credit card holders.

(g) ~~((Credit))~~ Card issuer's reimbursement fees. The numerator of the receipts factor includes:

(i) All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and ~~((fees or))~~ penalties ~~((in the nature of interest from credit card receivables and fees))~~ charged to credit card holders.

(ii) All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders.

(iii) All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders

included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(h) Receipts from merchant discount.

(i) If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numerator of the receipts factor includes receipts from merchant discount ((if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(ii) If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor includes such receipts from the merchant discount multiplied by a fraction:

(A) In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders; and

(B) In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; and

(C) In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(iii) The taxpayer's method for sourcing each receipt from a merchant discount must be consistently applied to such receipt in all states that have adopted sourcing methods substantially similar to (h)(i) and (ii) of this subsection and must be used on all subsequent returns for sourcing receipts from such merchant unless the department permits or requires application of the alternative method.

(i) Receipts from ATM fees. The receipts factor includes all ATM fees that are not forwarded directly to another bank.

(i) The numerator of the receipts factor includes fees charged to a card holder for the use at an ATM of a card issued by the taxpayer if the card holder's billing address is in this state.

(ii) The numerator of the receipts factor includes fees charged to a card holder, other than the taxpayer's card holder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in this state.

(j) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the

amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest ~~((and fees or penalties in the nature of interest from))~~, fees, and penalties imposed in connection with loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

~~((j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on east of performance-))~~

(k) Receipts from the financial institution's investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports are included in the receipts factor. Investment assets and activities and trading assets and activities include, but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from both investment assets and activities and from trading assets and activities described in (k)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in ~~((the))~~ each investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of (k)(ii) of this subsection, the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such

funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an ~~((investment))~~ asset or ~~((activity or trading asset or))~~ activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an ~~((investment))~~ asset or ~~((activity or trading asset or))~~ activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) All other receipts. The numerator of the receipts factor includes all other receipts from engaging in activities subject to tax under RCW 82.04.290 pursuant to the rules set forth in WAC 458-20-19402 Single factor receipts apportionment—Generally.

(m) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) Effective date. This rule applies to gross income that is reportable with respect to tax liability beginning on and after ~~((June 1, 2010))~~ January 1, 2016.

WSR 17-17-053

**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-187—Filed August 11, 2017, 10:09 a.m., effective September 1, 2017]

Effective Date of Rule: September 1, 2017.

Purpose: Amend recreational salmon fishing rules for the Carbon River.

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

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans and corrects an omission in the permanent rule filing of WSR 17-16-109 filed on July 28, 2017.

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

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

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

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

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

Date Adopted: August 11, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000T Exceptions to statewide rules—Carbon River. Notwithstanding the provisions of WAC 220-312-040, effective September 1, through November 30, 2017, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Carbon River (Pierce County):

(a) From mouth to Voight Creek:

(i) Barbless hooks required September 1 through November 30, 2017.

(ii) Salmon:

(A) Open September 1, 2017 through November 30, 2017

(B) Daily limit 6. Up to 4 adult salmon may be retained of which up to 2 may be hatchery Chinook salmon. Release chum and wild adult Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 01, 2017:

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

WSR 17-17-055

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed August 11, 2017, 12:22 p.m., effective August 11, 2017, 12:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-887-134, the pharmacy quality assurance commission (commission) is adopting a new section of rule to add fentanyl derivatives not approved by the Food and Drug Administration, synthetic cannabinoids, synthetic cathinones, and synthetic opioids to Schedule 1 under the Controlled Substance[s] Act making it illegal to sell, possess, manufacture, or deliver chemicals or products containing the substances.

Citation of Rules Affected by this Order: New WAC 246-887-134.

Statutory Authority for Adoption: RCW 69.50.201 and 69.50.203.

Other Authority: RCW 18.64.005(7).

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: These substances are readily available to the public over the internet, in tobacco and smoke shops, drug paraphernalia shops and convenience stores. Although labeled not for human consumption, these drugs are being marketed as a harmless alternative to illegal drugs. RCW 69.50.201 allows the commission to consider Drug Enforcement Agency findings, adopt rules for substances with potential for abuse, and directs the commission to add substances to chapter 69.50 RCW, Uniform Controlled Substances Act, if designated as a controlled substance under federal law. RCW 69.50.201(e) allows the commission to schedule substances that pose an imminent hazard to public safety by emergency rule.

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

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

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

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

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

Date Adopted: August 11, 2017.

Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

NEW SECTION

WAC 246-887-134 Adding fentanyl derivatives not approved by the Food and Drug Administration (FDA), synthetic cannabinoids, synthetic cathinones, and synthetic opioids to Schedule I. (1) The Washington state pharmacy quality assurance commission finds the following substances have high potential for abuse and have no medical use in treatment in the United States or they lack accepted safety for use in treatment under medical supervision. The commission, therefore, places each of the following substances in Schedule I.

(2) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.

(a) Fentanyl derivatives not approved by the FDA. Unless specifically excepted or unless listed in another schedule, any of the following fentanyl derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)

(ii) Butyryl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide)

(iii) Beta-Hydroxythiofentanyl (N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl))

(iv) Furanyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)

(b) Synthetic cannabinoids (Spice) and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic cannabinoid derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Cannabicyclohexanol, CP-47,497 C8 Homologue (5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol)

(ii) MAB-CHMINACA(N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (also known as ADB-CHMINACA)

(iii) UR-144(1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)

(iv) XLR11([1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone) (also known as 5-fluoro-UR-144)

(v) AKB48(N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide) (also known as APINACA)

(vi) PB-22 (quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate) (also known as QUPIC)

(vii) 5F-PB-22(quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (also known as 5-fluoro-PB-22)

(viii) AB-FUBINACA(N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)

(ix) ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)

(x) AB-PINACA (N-[1-Amino-3-methyl-1-oxo-2-butanyl]-1-pentyl-1H-indazole-3-carboxamide)

(xi) AB-CHMINACA (N-[1-Amino-3-methyl-1-oxo-2-butanyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)

(xii) THJ-2201([1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)

(xiii) 5F-ADB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) (also known as 5F-MDMB-PINACA)

(xiv) 5F-AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)

(xv) 5F-APINACA (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide) (also known as 5F-AKB48)

(xvi) ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)

(xvii) MDMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (also known as MMB-CHMINACA)

(xviii) MDMB-FUBINCACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)

(c) Synthetic cathinones (Bath salts) and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic cannabinoid derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) 4-MEC (4-methyl-N-ethylcathinone)

(ii) 4-MePPP (4-methyl-alpha-pyrrolidinopropiophenone)

(iii) [alpha]-PVP (alpha-pyrrolidinopentiophenone)

(iv) Pentedrone (2-(methylamino)-1-phenylpentan-1-one)

(v) 4-FMC, Flephedrone (4-fluoro-N-methylcathinone)

(vi) 3-FMC (3-fluoro-N-methylcathinone)

(vii) Naphyrone (1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one)

(viii) [alpha]-PBP (alpha-pyrrolidinobutiophenone)

(d) Synthetic opioids and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic cannabinoid derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)

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 17-17-056
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed August 11, 2017, 1:51 p.m.]

The Washington department of fish and wildlife would like to rescind WSR 17-17-046 filed on August 10, 2017, due to an error in numbering.

Jacalyn M. Hursey
 Administrative Regulations Analyst

WSR 17-17-057
EMERGENCY RULES
BIG BEND
COMMUNITY COLLEGE
 [Filed August 11, 2017, 2:04 p.m., effective August 11, 2017, 2:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To meet requirement of EHB 1595, which enacts new requirements for charging for records under the Public Records Act. This new law took effect on July 23, 2017. This new legislation requires agencies to select one of three methods for charging fees for public records.

Citation of Rules Affected by this Order: Amending WAC 132R-175-090.

Statutory Authority for Adoption: RCW 28B.50.140.

Other Authority: Chapter 34.05 RCW, Administrative Procedure Act.

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: EHB 1595, which enacts new requirements for charging for records under the Public Records Act. This new law took effect on July 23, 2017. This new legislation requires agencies to select one of three methods for charging fees for public records.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: August 11, 2017.

Melinda Dourte
 Executive Assistant
 to the President

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-175-090 ((Copying)) Costs of providing copies of public records. The college may charge a reasonable fee for providing public records in response to requests under chapter 42.56 RCW received on or after July 23, 2017.

(1) Pursuant to RCW 42.56.120 (2)(b), Big Bend Community College finds that it is unduly burdensome for the college to calculate the actual costs to provide records due to insufficient resources to conduct a comprehensive study to determine actual costs and the interruption of essential college business that would result from conducting such a comprehensive study.

(2) The college reserves the right to charge fees to the requestor in accordance with the amounts provided in RCW 42.56.120. The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor.

(3) No fee shall be charged for the inspection of public records ((The district shall charge a fee of twenty-five cents per page of copy for providing copies of public records and for use of the district copy equipment. This charge is the amount necessary to reimburse the district for its actual costs incident to such copying.)) or locating public documents and making them available for copying, with the exception of the customized service charge allowed in RCW 42.56.120.

(4) The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(5) At least five working days may be required to provide copies of public records.

WSR 17-17-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed August 11, 2017, 2:18 p.m., effective August 12, 2017]

Effective Date of Rule: August 12, 2017.

Purpose: Amend commercial sea cucumber rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000B; and amending WAC 220-340-730.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close the commercial harvest of sea cucumbers in District 2 East, Admiralty Inlet. The harvestable quota will be reached in this district. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 11, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-340-73000C Commercial sea cucumbers fishery. Notwithstanding the provisions of WAC 220-340-730, effective August 12, 2017, under further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish/Shellfish areas of Sea Cucumber District 1 Monday through Friday of each week: 20A and B, 21A and B, and 22A and B.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish/Shellfish areas of Sea Cucumber District 2 Monday through Friday of each week: 29, 23A, 23C, and 23D. Sea cucumber harvest is not allowed within a closure zone in Area 23C west of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude and east of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 2,500 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 12, 2017.

WAC 220-340-73000B Commercial sea cucumber fishery.
(17-188)

WSR 17-17-060 EMERGENCY RULES ARTS COMMISSION

[Filed August 11, 2017, 3:39 p.m., effective August 11, 2017, 3:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The Public Records Act is chapter 42.56 RCW. RCW 42.56.120 as amended effective July 23, 2017 (section 3, chapter 304, Laws of 2017) requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs because to do so would be unduly burdensome. The new emergency rule WAC 30-04-060 makes those findings. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. WAC 30-04-060 also provides for fee waivers.

Purpose: The purpose of the rule is to implement the state legislature's new Public Records Act requirement and provide the necessary findings so the Washington state arts commission may begin using the amended statutory default fee schedule and waive copy fees under listed circumstances effective immediately. The additional purpose of the rule amendment is to explain procedures for payment.

Citation of Rules Affected by this Order: Amending WAC 30-04-060 Copying.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), and 42.56.120 (as amended by section 3, chapter 304, Laws of 2017).

Other Authority: RCW 43.46.040.

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

Reasons for this Finding: The Washington state arts commission finds good cause that a new emergency rule WAC 30-04-060 is necessary for the following reasons: The Public Records Act is chapter 42.56 RCW. The 2017 legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, to require if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs because to do so would be unduly burdensome. The agency is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in WAC 30-04-060. In addition, RCW 42.45.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. In order to waive copy fees for records responsive to a request submitted on or after July 23, 2017, WAC 30-04-060 describes the circumstances under which the agency will waive copy fees.

There is insufficient time under permanent rule-making procedures for the agency to bring its copying fees into statutory compliance by July 23, 2017, and as directed by the legislature. The agency also finds it is in the general welfare and the public interest, and benefits requesters and the agency, to adopt the emergency rule in order to preserve and update fees in accordance with the legislatively adopted schedule, allow for fee waivers, and provide payment procedures. Therefore, emergency rule making is necessary. The agency intends to proceed with permanent rule making on this subject in the near future.

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

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

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

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

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

Date Adopted: August 11, 2017.

Karen Hanan
Executive Director

AMENDATORY SECTION (Amending WSR 10-23-102, filed 11/16/10, effective 12/17/10)

WAC 30-04-060 Copying. (1) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the Washington state arts commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(2) The Washington state arts commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.

(3) No fee shall be charged for the inspection of public records. ((The commission shall charge ten cents per black and white copy. Specialized records, including color copy, will be duplicated at the amount necessary to reimburse the commission for its actual cost. If the public records officer deems it more efficient to have copying and/or duplicating done outside the commission, the charges will be based on the actual cost of such outside copying and/or duplicating service.))

For all copying and/or duplicating service charges incurred, an invoice will be sent to the requestor. Reimburse-

ment is payable within fifteen days of receipt of invoice payable to the Washington state arts commission. The commission may require that all charges be paid in advance of release of the copies of the records.

WSR 17-17-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-199—Filed August 11, 2017, 3:44 p.m., effective August 18, 2017]

Effective Date of Rule: August 18, 2017.

Purpose: Amend recreational fishing rules on the Snake River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000R; and amending WAC 220-312-050.

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

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

Reasons for this Finding: This emergency rule is needed to correct an error in filing WSR 17-17-046 filed August 10, 2017. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 11, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-05000R Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050,

(1) **Snake River** - Effective August 18, through October 31, 2017, open for salmon from the Burbank-to-Pasco railroad bridge at Snake River mile 1.25 upstream to the Oregon State line:

(a) Daily limit of six adipose fin clipped Chinook adults (24 inches in length and larger), and 6 jack Chinook (less than 24 inches). Minimum size for Chinook is 12 inches.

(b) Anglers must cease fishing for salmon and steelhead once either the daily limit for adult salmon or steelhead has been retained.

(c) Release all wild adult Chinook.

(d) Barbless hooks are required when fishing for Chinook or steelhead.

(e) It is unlawful to remove any Chinook or steelhead from the water unless it is retained as part of the daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2017:

WAC 220-312-05000R Freshwater exceptions to statewide rules—Eastside.

**WSR 17-17-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-195—Filed August 11, 2017, 4:22 p.m., effective August 11, 2017, 4:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial gillnet and purse seine fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-47-31100A and 220-47-41100A; and amending WAC 220-47-311 and 220-47-411.

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: Harvest nontreaty share of Nooksack and Samish Chinook as agreed to with the tribal comanagers in Puget Sound Salmon Management and Catch Reporting Areas 7B and 7C, harvest nontreaty share of Port Gamble Bay coho as agreed to with the tribal comanagers in Puget Sound Salmon Management and Catch Reporting Area 9A, and harvest nontreaty share of South Sound pinks in Puget Sound Salmon Management and Catch Reporting Area 10 as agreed to with the tribal comanagers. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 11, 2017.

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

NEW SECTION

WAC 220-47-31100A Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open Areas	Open Periods
7B, 7C	6 AM - 8 PM daily 8/16, 8/23, and 8/30
10 - limited participation 5 boats only	7 AM - 7 PM daily 8/23, 8/29, and 8/31

NEW SECTION

WAC 220-47-41100A Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open Areas	Open Periods	Mesh Size
7B, 7C	7 PM - 8 AM nightly 8/13, 8/14, 8/15, 8/20, 8/21, 8/22, 8/23, 8/27, 8/28, 8/29, and 8/30;	Minimum 7 inch
9A	7 AM 8/13 through 11:59 PM 9/2	Minimum 5 inch
10 - limited participation 5 boats only	7 PM - 7 AM nightly 8/22, 8/28, 8/30	Minimum 4.5 inch and maximum 5.5 inch

REPEALER

The following sections of the Washington Administrative Code are repealed effective 11:59 PM September 2, 2017:

WAC 220-47-31100A Purse seine—Open periods.

WAC 220-47-41100A Gillnet—Open periods.

WSR 17-17-068**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 17-198—Filed August 14, 2017, 3:27 p.m., effective August 18, 2017, 4:02 a.m.]

Effective Date of Rule: August 18, 2017, 4:02 a.m.

Purpose: Amend recreational fishing rules in the Entiat River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000Q; and amending WAC 220-312-050.

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

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

Reasons for this Finding: This emergency rule is necessary because summer Chinook salmon are not native to the Entiat River. Their presence is the result of smolt releases from the Entiat National Fish Hatchery. Returns of summer Chinook salmon (adipose clipped and unclipped) are currently in excess of hatchery broodstock needs. Removal of the mark selective fishery rules will expand harvest opportunities to anglers while reducing impacts related to spawning between summer and Endangered Species Act listed native spring Chinook. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 14, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-05000Q Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050,

Entiat River - Effective 4:02 A.M. August 18 through September 30, 2017, open for salmon from the mouth (railroad bridge) to boundary marker(s) located approximately 1500 feet upstream of the Upper Roaring Creek Road Bridge (Immediately downstream of the Entiat National Fish Hatchery):

Retention of un-clipped Chinook as part of the salmon daily limit is allowed.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2017:

WAC 220-312-05000Q Freshwater exceptions to statewide rules—Eastside.

WSR 17-17-069**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 17-200—Filed August 14, 2017, 3:32 p.m., effective August 16, 2017]

Effective Date of Rule: August 16, 2017.

Purpose: Amend commercial shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000H; and amending WAC 220-340-520.

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

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

Reasons for this Finding: The 2017 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes the pot fishery season for spot shrimp in Shrimp Management Areas 1A and 1C, as the quota will be reached; and (2) implements a spot shrimp limit of one thousand two hundred pounds in all areas from August 9 through August 22, 2017. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: August 14, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-52000I Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 2W, 3 and 5 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 2W and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E and 25A are closed to the harvest of spot shrimp.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per week from Shrimp Management Area 2W. The non-spot shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective August 9, 2017, through 11:59 p.m. August 22, 2017, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 1,200 pounds.

(d) Effective 12:01 a.m. August 23, 2017 until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher or fisher's alternate operator to exceed 600 pounds per week. The spot shrimp catch accounting week is Wednesday through Tuesday.

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(f) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open.

(d) That portion of Catch Area 21A within SMA 1B is open.

(e) Catch Area 20A is open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 16, 2017:

WAC 220-340-52000H Puget Sound shrimp pot and beam trawl fishery—Season. (17-189)

WSR 17-17-070 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-193—Filed August 14, 2017, 3:34 p.m., effective August 16, 2017]

Effective Date of Rule: August 16, 2017.

Purpose: Amend recreational fishing rules for possession and delivery of Canadian-origin food fish and shellfish.

Citation of Rules Affected by this Order: Repealing WAC 220-310-21000B; and amending WAC 220-310-210.

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: Canadian Customs and Border Security regulations related to requirement for obtaining a customs clearance number have recently changed. This regulation is needed to provide an alternate means for persons seeking to possess and/or land Canadian caught fish in Washington waters or ports of call. The regulation helps ensure the viability of fishing related resort owners in Washington who want to act as a port of call for Washington fishers seeking to fish in adjacent Canadian waters. The modification to existing permanent regulations also maintains the enforceability of Washington fishing regulations established to meet conservation objectives by ensuring that fish possessed in Washington waters or ports of call are caught consistent with the

rules and regulations for the waters from where they are harvested and that there is minimal opportunity for fishers in areas of international water boundaries to confuse their regulatory responsibilities. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 14, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-21000C Possession and delivery of Canadian-origin food fish and shellfish Notwithstanding the provisions of WAC 220-310-210, effective August 16, 2017, until further notice, it is unlawful to possess in marine waters or deliver into Washington any fresh salmon taken for personal use from Canadian waters unless such salmon meet current salmon regulations for the waters of the applicable department of fish and wildlife catch record card area. However, if the vessel operator has a valid Canadian Customs and Border Protection clearance number obtained while the vessel was moored at a Canadian government dock in Ucluelet, Victoria, Sydney, White Rock, or Bedwell Harbour, British Columbia, OR has submitted the information listed below to the department; at http://wdfw.wa.gov/licensing/canadian_catch.php; trip date (departure and return dates if more than one day); number of individuals onboard; Vessel Registration Number; and Primary Operators information to include: WILD ID and email address OR Name, Date of Birth, phone number, physical address, and email address, fishers aboard the vessel may deliver Canadian-origin salmon into Washington that are lawfully taken in Canada, regardless of whether the salmon meet the current salmon regulations for the area where delivered.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-21000B Possession and delivery of Canadian-origin food fish and shellfish.
(17-108)

WSR 17-17-090 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-196—Filed August 17, 2017, 4:13 p.m., effective August 17, 2017, 4:13 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000G; and amending WAC 220-358-030.

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

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

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

Reasons for this Finding: Sets the initial 2017 fall season for nontreaty mainstem Columbia River commercial fisheries. The select area fisheries were set at a previous compact hearing. The preseason forecast for the Columbia River return of fall Chinook is six hundred thirteen thousand eight hundred fish. This forecast provides harvestable Chinook for commercial purposes. Harvest estimates for the seasons are well within ESA limits and sharing guidelines. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of August 16 and July 27, 2017. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries

Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: August 17, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-358-03000H Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-338-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Mainstem Columbia River

(a) **Season:** 9:00 PM Tuesday August 22 to 6:00 AM Wednesday August 23, 2017

9:00 PM Thursday August 24 to 6:00 AM Friday August 25, 2017

9:00 PM Sunday August 27 to 6:00 AM Monday August 28, 2017

9:00 PM Tuesday August 29 to 6:00 AM Wednesday August 30, 2017

9:00 PM Thursday August 31 to 6:00 AM Friday September 1, 2017

(b) **Area:** SMCRA 1D and 1E (Zones 4-5). The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore.

(c) **Sanctuaries:** Washougal and Sandy rivers.

(d) **Allowable Possession:** Chinook, Coho, Sockeye and Pink salmon, shad and white sturgeon. A maximum of six white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to mainstem fisheries only.

(e) **Gear:** Drift nets only. 9-inch minimum mesh size. Multiple net rule not in effect, which means nets not authorized for this fishery may not be onboard. Lighted buoys required.

(f) **Other:** As a condition of fishing or participating in this fishery, owners or operators of commercial fishing vessels must carry and accommodate a Department observer for the duration of the fishing trip, when requested. It is unlawful to deny access or fail to carry a Department observer upon request. When a Department observer is on board, it is expected that any steelhead caught will be brought on board for biological sampling prior to release. As used in this rule, a Department observer is an employee of either the Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife or the Pacific States Marine Fisheries Commission.

(2) Deep River Select Area.

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights August 21-September 1

Monday, Tuesday, Wednesday, Thursday and Friday nights September 4-September 23

Monday, Tuesday, Wednesday, and Thursday nights September 25-October 13, 2017

Open hours are 7 PM to 7 AM through September 1, 6 PM to 9 AM from September 4 to 23, and 7 PM to 7 AM thereafter.

(b) **Area:** The Deep River Select Area. All waters from West Deep River Road bridge at the town of Deep River, downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4-inch through September 9 and 6-inch thereafter. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel (WAC 220-20-015(1)).

(3) Tongue Point/South Channel

(a) **Season:** Monday and Wednesday nights August 28-August 31

Monday, Tuesday, Wednesday, and Thursday nights September 4-October 27, 2017

Open Hours: 7 PM-7 AM through September 8 and 4 PM-10 AM thereafter.

(b) **Area:** The Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

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

(c) **Gear:** Gillnets. 6-inch maximum mesh size. Maximum net length of 250 fathoms. In the Tongue Point fishing area: weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel. In the South Channel fishing area: no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

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

(4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday and Wednesday nights August 28-August 31,

Monday, Tuesday, Wednesday, and Thursday nights September 4-October 27, 2017

Open Hours: 7 PM-7 AM through September 8 and 6 PM-10 AM thereafter.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 1/2-mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. The area within a 100-foot radius of the mouth of Big Creek is closed.

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

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

(5) Additional requirements for all Select Area commercial fisheries:

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-358-010.

(b) **ALLOWABLE POSSESSION:** Chinook, Coho, Pink and Sockeye salmon, white sturgeon and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each

calendar week (Sunday through Saturday). The three white sturgeon possession and sales limit includes all Select Area fisheries.

(c) Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(6) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-180).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000G Columbia River seasons below Bonneville. (17-180)

**WSR 17-17-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-201—Filed August 17, 2017, 4:14 p.m., effective August 17, 2017, 4:14 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: Sets the fall treaty commercial gillnet fishery and allows the sale of fish caught in Zone 6.

The platform and hook and line fisheries were set at a previous compact hearing. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. The forecast for upriver fall Chinook is four hundred eighty-four thousand one hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on August 16 and July 27, 2017. 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 allow[s] 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 1, Amended 0, Repealed 1.

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

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

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

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

Date Adopted: August 17, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-359-02000F Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030 and WAC 220-359-090, 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 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, 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, 1G, 1H (Zone 6):
 - (a) Season: 6:00 AM August 21 to 6:00 PM August 25, 2017
6:00 AM August 28 to 6:00 PM September 1, 2017
6:00 AM September 4 to 6:00 PM September 8, 2017
 - (b) Gear: Set nets and drift gillnets. 8-inch minimum mesh restriction.
 - (c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, and carp. Sturgeon may not be sold but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.
 - (d) Standard river mouth and dam sanctuaries are in place, including the Spring Creek Hatchery sanctuary.
- (2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - (a) Season: Immediately through October 31, 2017
 - (b) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line.
 - (c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required.
 - (d) All sanctuaries for these gear types are in effect.
- (3) Columbia River Tributaries upstream of Bonneville Dam:
 - (a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.
 - (b) Area: Drano Lake, and Klickitat River.
 - (c) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line. Gill nets may only be used in Drano Lake.
 - (d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-

54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately through October 31, 2017. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-352-180, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

(6) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000E Columbia River salmon seasons above Bonneville Dam. (17-181)

WSR 17-17-093 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-204—Filed August 17, 2017, 4:40 p.m., effective August 17, 2017, 4:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea cucumber fishery rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000C; and amending WAC 220-340-730.

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial harvest of sea cucumbers in District 2 West, Strait of Juan de Fuca. The harvestable quota will be reached in this district. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 17, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-340-73000D Commercial sea cucumbers fishery. Notwithstanding the provisions of WAC 220-340-730, effective immediately under further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish/Shellfish areas of Sea Cucumber District 1 Monday through Friday of each week: 20A and B, 21A and B, and 22A and B.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 2,500 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately.

WAC 220-340-73000C Commercial sea cucumber fishery.
(17-197)

WSR 17-17-095
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-203—Filed August 18, 2017, 10:42 a.m., effective August 18,
2017, 10:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational coastal salmon rules.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07000B; and amending WAC 220-313-070.

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

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

Reasons for this Finding: This emergency rule is needed to close the recreational salmon fishing in Marine Areas 1 and 2 because these areas will have reached their coho quotas by August 22. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 18, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-313-07000C Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-070, effective immediately, until further

notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Catch Record Card Area 1:

(a) Open immediately through August 22:

(i) Daily limit of 2 salmon; no more than one may be a Chinook.

(ii) Release wild coho.

(b) August 23 until further notice: Closed.

(c) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-313-020.

(2) Catch Record Card Area 2:

(a) Open immediately through August 22:

(i) Daily limit of 2 salmon

(ii) Release wild coho.

(iii) The Grays Harbor Control Zone is closed. Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18'N latitude, 124°07.01'W longitude) to Buoy #2 (46°52.42'N latitude, 124°12.42'W longitude) to Buoy #3 (46°55.00'N latitude, 124°14.48'W longitude) to the Grays Harbor north jetty (46°55.36'N latitude, 124°10.51'W longitude).

(b) August 23 until further notice - Closed.

(3) Willapa Bay (Catch Record Card Area 2-1):

(a) Immediately until further notice:

(i) Daily limit of 6 salmon; no more than 3 may be adult salmon.

(ii) Release wild Chinook.

(iii) Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

(iv) Waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) then, northeasterly to the power transmission pole located at 46°43.19'N, 123°50.83'W are closed until September 30.

(4) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):

(a) Immediately until further notice:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

(iii) Waters south of a line running from the south end of the eastern jetty at Ocean Shores Marina to the fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) are closed.

(c) The Westport Boat Basin and Ocean Shores Boat Basin are open immediately until further notice.

(i) Daily limit of 6 salmon; no more than 4 may be adult salmon.

(ii) Release Chinook.

(iii) Night closure and anti-snagging rule in effect.

(5) Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):

(b) Immediately until further notice: Closed.

(6) Catch Record Card Area 3:

(a) Open immediately through September 4:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

(b) September 5 until further notice: Closed.

(7) Catch Record Card Area 4:

(a) Open immediately through September 4:

- (i) Daily limit of 2 salmon.
 - (ii) Release wild coho.
 - (iii) No chinook retention in waters east of the Bonilla-Tatoosh line.
 - (iv) Release chum salmon.
- (b) September 5 until further notice: Closed.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-313-07000B Coastal salmon—Saltwater seasons and daily limits. (17-170)

WSR 17-17-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-206—Filed August 18, 2017, 1:57 p.m., effective August 18, 2017, 1:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for the coastal salmon troll fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000D; and amending WAC 220-354-300.

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: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries [Fishery] Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 18, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-354-30000E Coastal salmon troll seasons—Commercial. Notwithstanding the provisions of WAC 220-354-300, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1 and 2 open:

(a) Immediately through September 19, 2017, 7 days per week.

(b) Landing and possession limit of 150 Chinook and 10 coho per vessel per calendar week, defined as Monday through Sunday.

(2) Salmon Management and Catch Reporting Areas 3 and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

(a) Immediately through August 20, 2017, 5 days per week, Fridays through Tuesdays.

(b) Landing and possession limit of 75 Chinook and 10 coho per vessel per open period through August 20.

(c) August 21 through September 19, 2017, 7 days per week

(d) August 21 through September 19, 2017, landing and possession limit of 100 Chinook and 10 coho per vessel per per calendar week, defined as Monday through Sunday.

(3) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed. The Grays Harbor Control Zone is closed.

(4) All retained coho must be marked with a healed adipose fin clip.

(5) No chum retention north of Cape Alava, WA in August and September.

(6) Minimum size for Chinook salmon is 28 inches in length. Minimum size for coho salmon is 16 inches in length. No minimum size for pink, sockeye or chum salmon.

(7) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(8) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of

Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(9) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(10) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(11) The Grays Harbor Control Zone is defined as the area within and east of a line drawn from the Westport Lighthouse (46°53'18" N. lat., 124°07'01" W. long.) to Buoy #2 (46°52'42" N. lat., 124°12'42" W. long.) to Buoy #3 (46°55'00" N. lat., 124°14'48" W. long.) to the Grays Harbor north jetty (46°55'36" N. lat., 124°10'51" W. long.).

(12) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00'N latitude; 125°14.00'W longitude to 48°02.00'N latitude; 125°14.00'W longitude to 48°02.00'N latitude; 125°16.50'W longitude to 48°00.00'N latitude; 125°16.50'W longitude and connecting back to 48°00.00'N latitude; 125°14.00'W longitude.

(13) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(14) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-354-30000D Coastal salmon troll seasons—
Commercial. (17-171)

WSR 17-17-099 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-208—Filed August 18, 2017, 1:58 p.m., effective August 18, 2017, 1:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial beach seine fishing rules.

Citation of Rules Affected by this Order: Repealing WAC 220-47-42800T and 220-47-42800U; and amending WAC 220-47-428.

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

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

Reasons for this Finding: This emergency rule is needed to close the beach seine fishery in Puget Sound Salmon Management and Catch Reporting Area 12C because the quota will have been reached. Puget Sound Salmon Management and Catch Reporting Area 12A will remain open. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 18, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-42800U Beach seine—Open periods.

Notwithstanding the provisions of WAC 220-47-428, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the areas and open periods indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods
12A	7 AM - 7 PM daily 8/21, 8/22, 8/23, 8/24, 8/25, 8/28, 8/29, 8/30, 8/31, 9/1, 9/4, 9/5, 9/6, 9/7, 9/8

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-42800T Beach seines—Open periods. (17-179)

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. September 8, 2017:

WAC 220-47-42800U Beach seines—Open periods.

WSR 17-17-121

EMERGENCY RULES

EASTERN WASHINGTON UNIVERSITY

[Filed August 21, 2017, 4:17 p.m., effective August 21, 2017, 4:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These revisions are necessary to comply with recent state appellate court authority indicating that we must offer a full adjudicative hearing if a sanction could lead to suspension, expulsion or if charges were filed for felony level sexual misconduct. Pieces of documentation were added to the administration and records section. Under the conduct review proceedings section, the piece stating that advisors cannot speak or directly participate in the proceeding was removed. Some other procedural changes were made to comply with the requirements of a full adjudicative hearing.

Citation of Rules Affected by this Order: New WAC 172-121-121, 172-121-122 and 172-121-123; and amending WAC 172-121-020, 172-121-070, 172-121-075, 172-121-080, 172-121-100, 172-121-105, 172-121-110, 172-121-120, 172-121-130, 172-121-140, and 172-121-200.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Reasons for this Finding: Amending chapter 172-121 WAC, Student conduct code, to codify rules related to the conduct hearing process for students of Eastern Washington University (EWU). Recent state appellate court case, *Arishi*

[Arishi] v. Washington State University, established that if a sanction could lead to suspension, expulsion or if the charges rise to the level of a felony under Washington criminal law, universities must offer a full adjudicative hearing. EWU will now offer three types of hearings. Summary hearing, for allegations that are less than a suspension, and council hearings, for allegations other than sexual misconduct, will be presided over by the conduct review officer. A single administrative law judge will now preside over all sexual misconduct hearings. Complainants, respondents and their advisors may ask questions of each other except in sexual misconduct hearings where the questions are submitted to the conduct review officer, whom may ask or reject the questions, if deemed irrelevant or inappropriate. A student who is interim suspended will receive an emergency appeal hearing with the vice president for student affairs within ten business days of the served suspension. A CR-103P has been submitted, however, the previously submitted CR-103E expires before the permanent rule becomes effective on September 9, 2017.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 9, 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: August 21, 2017.

Joseph Fuxa
Labor Relations Manager

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

~~("Accused" refers to any student or student organization that is accused of violating the student conduct code under this chapter.)~~

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any (~~accused~~) respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means any person who files a complaint alleging that a student or student organization violated the

standards of conduct for students. Complainant also refers to the university when the university files the complaint.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or a designee of the dean of students.

"Director of SRR" refers to the director of student rights and responsibilities, or designated representative.

~~("Harassment" encompasses harassment, sexual harassment, gender-based harassment, and stalking for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.)~~

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to 300 Showalter Hall, or emailing them to studentrights@ewu.edu.

"Hearing authority" refers to the university official or student disciplinary council who holds a conduct review hearing.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on his or her personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant and the respondent.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Respondent" refers to any student or student organization that is accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment, domestic violence, relationship violence, stalking, and acts of sexual violence for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.

"Sexual misconduct hearing" refers to a full conduct review hearing before a university official for allegations of

sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion, or that rise to the level of felony-level sexual misconduct.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Summary hearing" refers to a ~~(conduct)~~ brief review hearing before the conduct review officer.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or a designee of the university president.

"Vice president for student affairs" refers to the vice president for student affairs or their designated representative.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-070 Conduct review officials. (1) The director of SRR shall:

(a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;

(b) Manage the proceedings as described in this chapter;

(c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;

(d) Ensure complaints ~~(of harassment or sexual misconduct involving students)~~ are promptly investigated and resolved as required by federal and state laws.

(e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president shall designate one or more conduct review officers. The director of ~~(OSRR)~~ SRR may be designated as a conduct review officer. The conduct review officer(s) shall ~~(=~~

~~(=)~~ preside over conduct review proceedings under this chapter~~(; and~~

(b) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives)). For sexual misconduct cases where the possible sanction may be suspension, expulsion, or involve felony-level sexual misconduct, the CRO also acts as the decision-maker as set forth in WAC 172-121-123.

As the presiding officer, the conduct review officer has authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 34.05.446;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;
- (j) Take official notice of facts pursuant to RCW 34.05.452(5);
- (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Issue an order of default;
- (n) Hold prehearing conferences; and
- (o) Take any other action necessary and authorized by any applicable statute or rule.

(3) Student disciplinary council: The student disciplinary council hears cases of student conduct code violations that do not involve sexual misconduct as described in WAC 172-121-120. The council also serves as an appeal authority under WAC 172-121-130.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the university president. Appointment of council pool members is as follows:

- (i) Faculty ~~((members shall be selected by the faculty senate for three-year terms;~~
- (ii) Staff members ~~shall be appointed by the university president for three-year terms;~~
- (iii) Students ~~shall be appointed by the president of the ASEWU for one-year terms. Student appointments shall be made with the advice and consent of the associated students' legislature, as described in the constitution of the ASEWU. Students holding a position with any of the associated student courts, or who are in any way affiliated with any judicial, quasi-judicial, or advocacy position with the courts of the ASEWU, may not be appointed to the council pool;~~
- (iv) Community members: One or more members of the local community may be appointed by the university president. Community members serve until either the community

member or the university president elects to sever the appointment, up to a maximum appointment period of three years. Community members shall be considered school officials while acting in their capacities as community members on the student disciplinary council and shall sign statements indicating they will comply with the confidentiality requirements of the Family Education Rights and Privacy Act;

~~(v))~~ and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: The director of SRR, or designee, shall serve as chair of council proceedings but will not have the right to vote, except in the case of a tie;

~~((v))~~ (iii) Vacancies: Council pool vacancies shall be filled as needed ~~((by the designated appointing authority))~~ through presidential appointment.

(b) Session council: When a student disciplinary council is needed for a hearing or an appeal, ~~((council members shall be selected from the council pool as follows:~~

(i) Composition: A session council will typically consist of one nonvoting chair, two student members, and two faculty or staff members. The faculty/staff members may be both faculty, both staff, or one faculty and one staff member. The number of council members may vary, so long as quorum requirements are met. A community member may also serve on a session council, at the discretion of the director of SRR;

~~((ii) Selection:))~~ the director of SRR shall select available members from the council pool to serve as the session council(~~;~~

~~((iii) Quorum: A quorum consists of three voting members which must include at least one student and one faculty/staff member))~~. Each session council must include a quorum. A quorum is three voting members, which must include at least one student and one faculty/staff member.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-075 Conflicts of interest. (1) Individuals who play a role in receiving, investigating, and otherwise processing complaints shall not have any conflict of interest in the process. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Anyone who serves as an investigator or advocate, or someone who is subject to the authority, direction, or discretion of such a person, may not serve as the conduct review officer for a full adjudicative hearing.

(3) Challenges to council membership. Members of the student disciplinary council and the conduct review officer shall not participate in any case in which they are the ~~((accused))~~ respondent, the complainant, a victim, or a witness; in which the respondent, complainant, victim, or a witness is a family member or friend; in which they have a personal interest or bias; or in which they have acted previously in an investigatory, advisory, or adjudicatory capacity.

(a) If a member has such a conflict, the person shall recuse (~~themselves~~) him/herself from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A member's or the conduct review officer's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the conduct review officer. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies (~~themselves~~) him/herself from a case, the director of SRR will appoint a replacement.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) A summary of the proceedings during a preliminary conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings; (~~and~~)

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council;

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476; and

(x) Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student discipline council or conduct review officer communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the (~~accused~~) respondent may review the records relative to their case. The (~~accused~~) respondent shall request to review the case records by contacting the conduct review officer. The conduct review officer shall make every reasonable effort to support the (~~accused's~~) respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants, victims, or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or

other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The conduct review officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the conduct review officer.

(c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is ~~((accused of violating))~~ the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities; or

(ii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is acting as the complainant, ~~((the director of SRR))~~ an EWU employee shall initiate the complaint.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of ~~((harassment,))~~ sexual misconduct~~((;))~~ and/or criminal conduct that will require special processing under subsection (3) of this section and whether appropriate law enforcement or other authorities should be notified. The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if the charges rise to the level of a felony under Washington criminal law; all such cases are referred to a council hearing under WAC 172-121-122 or a sexual misconduct hearing under WAC 172-121-123.

(3) ~~((Special rules for complaints of harassment and/or sexual misconduct.))~~ Sexual misconduct hearings. Except where specifically stated, this section applies to all allegations the university receives of ~~((harassment and/or))~~ sexual misconduct. This section shall apply regardless of where the alleged acts occurred.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of

~~((harassment and/or))~~ sexual misconduct to the university Title IX coordinator within ~~((two business days))~~ twenty-four hours.

(b) Prompt resolution. The university shall investigate any complaint alleging ~~((harassment and/or))~~ sexual misconduct when it is legally required to do so to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of ~~((harassment and/or))~~ sexual misconduct shall be promptly investigated and resolved. For student conduct cases, the university uses the hearing processes set forth in this code as the means of investigating a complaint. In the absence of extenuating circumstances, the university will seek to have the allegations resolved within sixty days from the date it is notified of the allegation.

(c) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant or victim wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant or victim wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants or victims. Files subject to public disclosure will be released to the extent required by law.

(d) Right to file a criminal report. Once the university is notified of an allegation of ~~((sexual harassment, gender-based harassment, stalking, or any form of))~~ sexual misconduct, it will notify the potential victim of their right to file a criminal complaint with campus or local law enforcement. If the victim in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the victim that he or she is not required to file a report with local law enforcement. The university will report allegations of ~~((harassment or))~~ sexual misconduct to law enforcement or other authorities consistent with federal, state, and local law.

(4) Interim measures. During the complaint review, the director of SRR will evaluate the circumstances and recommend to the dean of students if any interim restriction action against the ~~((accused))~~ respondent is warranted or if any interim measures to assist or protect the complainant and/or victim during the conduct code process are needed. In cases of alleged ~~((harassment and/or))~~ sexual misconduct, the director of SRR shall, in conjunction with the dean of students and other appropriate university officials, take immediate steps to protect the complainant and/or victim from further harassment prior to completion of the investigation/resolution of the complaint. Appropriate steps may include separating the ~~((accused harasser))~~ respondent and the complainant/victim, providing counseling for the complainant/

victim and/or harasser, and/or taking disciplinary action against the ~~((accused))~~ respondent.

(5) Inform complainant. As part of the complaint review process, the director of SRR will follow up with the complainant as described below.

(a) For cases other than ~~((harassment and/or))~~ sexual misconduct, the director of SRR will contact the complainant and provide them with the following information:

(i) The complainant's rights under the student conduct code;

(ii) The allegations which the complainant has against the ~~((accused))~~ respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging ~~((harassment or))~~ sexual misconduct, the director of SRR will, in addition to the information specified under (a) of this subsection, provide the complainant with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the respondent; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures.

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a preliminary conference.

(a) Dismiss the matter. If the director of SRR ~~((believes that there is insufficient justification or insufficient evidence to pursue conduct review proceedings against the accused))~~ determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record

of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is ~~((appropriate and feasible))~~ permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of ~~((harassment and/or))~~ sexual misconduct, the complainant/victim may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within ten days.

(b) Preliminary conference. If the director of ~~((OSRR))~~ SRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-105 Conduct review proceedings. (1)

General provisions:

(a) ~~((AH))~~ Conduct review proceedings in which the potential sanction is less than suspension, expulsion, or do not involve allegations of felony level sexual misconduct are summary hearings and considered brief adjudicative proceedings in accordance with WAC 172-108-010(3), and shall be conducted in an informal manner. Conduct review proceedings in which the potential sanction is suspension, expulsion, or that involve allegations of felony level sexual misconduct are council hearings or sexual misconduct hearings under this code and are considered full adjudicative proceedings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant, victim, and the ~~((accused))~~ respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant, victim, or the ~~((accused))~~ respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

~~((The complainant and the accused are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any conduct review proceeding. The complainant and/or the accused may, however, speak quietly with their advisor during such proceedings; and~~

~~((d) If an attorney is used as an advisor, the person using the attorney shall inform the conduct review officer or the council of their intent to do so at least two business days prior to any conduct review proceeding.))~~ The advisor must provide the conduct review officer with a FERPA release signed by the student they are assisting;

(d) If a complainant, victim, or the respondent is represented by an attorney, the attorney shall provide the conduct review officer and other parties with the attorney's name,

address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding.

(4) Review of evidence:

((The accused)) (a) In summary hearings, the respondent, and, in cases of ((harassment and/or)) sexual misconduct, the complainant/victim may request to view material related to their case prior to a scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In council hearings, the parties may request to view material related to the case prior to the scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the conduct review officer. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the conduct review officer shall allow any other party to object to the request. The conduct review officer will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-110 Preliminary conference. (1) Scheduling. If, after reviewing a complaint, the director of SRR decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the ((accused)) respondent. In cases alleging ((harassment and/or)) sexual misconduct, the CRO assigned must have completed training on issues relating to ((harassment and)) sexual misconduct, ((including)) the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the ((accused)) charges to the respondent must:

(a) Be made in writing;

(b) Include a written list of charges against the ((accused)) respondent; and

(c) Include the name of the conduct review officer assigned to the case and the deadline for the ((accused)) respondent to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the ((accused)) respondent to contact the CRO will be within five business days of the date the director of SRR sent notification to the ((accused)) respondent.

(2) Failure to respond: If the ((accused)) respondent fails to ((comply with the notification requirements)) respond to

the notice of charges, the director of SRR shall schedule the preliminary conference and notify the ((accused)) respondent. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Follow up with complainant/victim. In all cases alleging ((harassment and/or)) sexual misconduct or if there will be a council hearing, the CRO shall notify the complainant(s) of the date, time, and location of the preliminary conference and of their right to attend the conference. The CRO shall also follow up with the ((complainant(s)/victim(s) to determine whether)) complainant(s)/respondent(s) to inform them of the process of reporting any retaliation or new incidents ((of harassment have occurred)). If the complainant/victim has experienced any type of retaliatory behavior, the university shall take immediate steps to protect the complainant/victim from further harassment or retaliation.

(4) Appearance. ((Except for cases alleging harassment and/or sexual misconduct,))

(a) For summary hearings only the ((accused)) respondent and the ((accused's)) respondent's advisor may appear at the preliminary conference, unless the case involves alleged sexual misconduct. In cases alleging ((harassment and/or)) sexual misconduct, the ((accused)) respondent and the complainant/victim, along with their advisors, if they choose to have an advisor, may appear at the preliminary conference.

(b) For council hearings and sexual misconduct hearings, both parties and their advisors may appear at the preliminary conference.

(5) Failure to appear. In cases where proper notice has been given but the ((accused)) respondent fails to attend the preliminary conference, the CRO may:

(a) Proceed with a hearing and decide the case based on the information available; or

(b) Place a hold on the ((accused's)) respondent's academic records as described in WAC 172-121-080.

(6) ((Proceedings:)) Preliminary conference. The purpose of the preliminary conference is to advise the parties regarding the student conduct process. If both of the parties are not present, the CRO will refrain from discussing any nonprocedural matters. During the preliminary conference, the conduct review officer will:

(a) Review the written list of charges with the ((accused)) respondent;

(b) Inform the ((accused)) respondent who is bringing the complaint against them;

(c) Provide the ((accused)) respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the ((accused's)) respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the ((accused's)) respondent's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

(7) After the preliminary conference, the conduct review officer will take one of the following actions:

(a) Conduct or schedule a summary hearing with the ~~((accused))~~ respondent as described in WAC ~~((172-121-120;))~~ 172-121-121 for cases where the possible sanction is less than a suspension or the allegations do not involve felony level sexual misconduct; or

(b) ~~((Schedule a summary hearing with the accused as described in WAC 172-121-120; or~~

~~(e))~~ Refer the case to either the student disciplinary council for a council hearing under WAC ~~((172-121-120))~~ 172-121-122 or a sexual misconduct hearing under WAC 172-121-123 for any cases where the possible sanction is a suspension, expulsion, or involves an allegation of felony level sexual misconduct.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-120 Hearing~~(s)~~ procedures. The provisions ~~((of subsections (1) through (8)))~~ of this section apply to both summary hearings and to council hearings.

(1) General provisions.

(a) Hearing authority: The hearing authority, through the conduct review officers, exercises control over hearing proceedings. All procedural questions are subject to the final decision of the ~~((hearing authority))~~ conduct review officer.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(2) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the ~~((accused))~~ respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the ~~((accused's))~~ respondent's input.

(b) Complainant's appearance: The complainant will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the ~~((accused))~~ respondent student during the hearing. The complainant may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, ~~((so long as the complainant's identity can be reasonably established))~~ subject to the limits set forth below in (e) of this subsection.

(c) Advisors: The complainant and the ~~((accused))~~ respondent may be assisted by ~~((an))~~ one advisor during conduct review hearings as described in WAC ~~((172-121-090))~~ 172-121-105.

(d) Disruption of proceedings: Any person, including the ~~((accused))~~ respondent, who disrupts a hearing, may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the ~~((hearing authority))~~ conduct review officer may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights

of the parties will not be substantially prejudiced by a telephonic appearance as determined by the conduct review officer.

~~((3))~~ (3) Evidence:

~~(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing authority. However, hearing authorities are not bound by the rules of evidence observed by courts. The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.~~

~~(b) The accused, and, in cases of sexual harassment or sexual misconduct, the complainant and/or victim, have the right to view all material presented during the course of the hearing.~~

~~(4))~~ Standard of proof. The hearing authority shall determine whether the ~~((accused))~~ respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the ~~((accused))~~ respondent violated the student conduct code.

~~((5))~~ (4) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the hearing authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed.

~~((6))~~ Witnesses:

~~(a) The complainant, victim, accused and hearing authority may present witnesses at council review hearings.~~

~~(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing.~~

~~(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.~~

~~(d) All parties have the right to hear all testimony provided by witnesses during the hearing.~~

~~(7) Questioning:~~

~~(a) The complainant and the accused may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.~~

~~(b) During a conduct review hearing, only the hearing authority may pose questions to persons appearing before them.~~

~~(c) The hearing authority may ask their own questions of any witness called before them.~~

~~(8) The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio~~

tape, written statement, or other means, as determined appropriate.

(9) Summary hearing procedures.

(a) The conduct review officer may hold a summary hearing with the accused only if all of the following conditions are met:

(i) The accused waives his/her right to prior notice about a conduct review hearing;

(ii) The accused requests that the case be heard in a summary hearing with the conduct review officer; and

(iii) The conduct review officer agrees to conduct the summary hearing. The conduct review officer is not obligated to conduct a summary hearing, but may instead refer the case to the student disciplinary council for a council hearing.

(b) Sexual misconduct cases. Allegations of sexual misconduct may not be resolved through a summary hearing but must be referred for a council hearing, unless the case has been otherwise resolved.

(c) Scheduling. A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of harassment, a summary hearing cannot take place without first notifying the complainant/victim of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the accused and, in the case of harassment, the complainant/victim of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(d) If the accused fails to appear at the summary hearing, the conduct review officer may conduct the summary hearing without the accused present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The conduct review officer may also place a hold on the accused's academic records under WAC 172-121-080.

(e) Deliberation. After the hearing, the conduct review officer shall decide whether the accused violated the student conduct code based on a preponderance of the evidence.

(i) If the conduct review officer determines that there is not sufficient information to establish a violation by a preponderance of evidence, the conduct review officer shall dismiss the complaint.

(ii) If the conduct review officer determines that the accused violated the student conduct code, the conduct review officer shall impose any number of sanctions as described in WAC 172-121-210.

(f) Notification. The conduct review officer shall serve the accused with a brief written statement setting forth the outcome of the summary hearing and notice of the right to appeal. In the case of sexual harassment, gender-based harassment, or stalking, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:

(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(B) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(10) Council hearing procedures.

(a) Scheduling and notification. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR shall schedule the hearing and notify the accused with the date, time and location of the hearing. The director of SRR shall also inform the council and notify the complainant/victim of the date, time, and location of the hearing in writing. The council must receive at least seventy-two hours' notice as to the time and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(b) Deliberations and sanctions. Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether, by a preponderance of the evidence, the accused violated the student conduct code. If the council determines the accused violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session.

(c) Notification. The council chair shall forward the council decision to the director of SRR. The director of SRR shall serve the accused with a brief written statement setting forth the council's decision and notice of the right to appeal. In the case of sexual harassment, gender-based harassment, stalking, or any act of sexual misconduct, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment/sexual misconduct occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:

(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(B) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a);)

NEW SECTION

WAC 172-121-121 Summary hearings. Summary hearing procedures.

(1) The conduct review officer may hold a summary hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve felony level sexual misconduct.

(2) Scheduling. A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct, a summary hearing cannot take place without first notifying the complainant/respondent of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the respondent and, in the case of sexual miscon-

duct, the complainant of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(3) If the respondent fails to appear at the summary hearing, the conduct review officer may conduct the summary hearing without the respondent present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The conduct review officer may also place a hold on the respondent's academic records under WAC 172-121-080.

(4) Deliberation. After the hearing, the conduct review officer shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence.

(a) If the conduct review officer determines that there is not sufficient information to establish a violation by a preponderance of evidence, the conduct review officer shall dismiss the complaint.

(b) If the conduct review officer determines that the respondent violated the student conduct code, the conduct review officer shall impose any number of sanctions as described in WAC 172-121-210.

(5) Notification. The conduct review officer shall serve the respondent with a brief written statement setting forth the outcome of the summary hearing and notice of the right to appeal. In a sexual misconduct, the victim shall be provided with written notice of:

(a) The university's determination as to whether such sexual misconduct occurred;

(b) The victim's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

NEW SECTION

WAC 172-121-122 Council hearing procedures. (1) Scheduling and notification. Council hearings are used for allegations other than sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR shall schedule the hearing and notify the respondent with the date, time, and location of the hearing. The director of SRR shall also inform the council and notify the complainant/victim of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The conduct review

officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(2) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the conduct review officer in accordance with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The conduct review officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The conduct review officer may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the conduct review officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent has the right to view all material presented during the course of the hearing.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(3) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(4) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The conduct review officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(6) Witnesses.

(a) The complainant, victim, respondent and hearing authority may present witnesses at council review hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. For purposes of a council hearing, an attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five days prior to the hearing. The CRO will comply with WAC 10-08-150.

(7) Questioning:

(a) The complainant, the respondent, and their advisors may ask questions of each other or of any witnesses, except the CRO may preclude any questions which he/she considers inappropriate, irrelevant, immaterial or unduly repetitious. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The CRO and any members of the council may ask their own questions of any witness called before them.

(8) The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate, subject to subsection (2) of this section.

(9) Deliberations and sanctions. Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether, by a preponderance of the evidence, the respondent violated the student conduct code. If the council determines the respondent violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session. The council shall issue a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. The findings shall be based exclusively on the evidence provided at the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available post-hearing remedies.

(10) Notification. The council chair shall forward the council decision to the director of SRR. The director of SRR shall serve the respondent with a brief written statement setting forth the council's decision and notice of the right to appeal.

Information regarding the discipline of the respondent will not be released unless:

(a) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(b) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by the (~~accused~~) respondent or the complainant. In cases of (~~harassment and/or~~) sexual misconduct, the victim may also file an appeal. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the charges and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The ~~((accused))~~ respondent was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority was based on the information presented and that ~~((that))~~ information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(2) Filing: Appeals may be filed following a summary hearing, conduct review hearing or sexual misconduct hearing, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ten calendar days from service of the council's decision following a council hearing or the CRO's decision following a sexual misconduct hearing, and within twenty-one calendar days from service of a decision from a summary hearing, from service of the ~~((council's))~~ decision;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.

(3) Appeal authorities:

(a) For summary hearings heard by the conduct review officer, appeals are determined by the student disciplinary council.

(b) For student disciplinary council hearings, appeals are determined by the ~~((dean of students))~~ vice president for student affairs.

(c) For sexual misconduct hearings, appeals are determined by the vice president for student affairs.

(4) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the ~~((accused))~~ respondent. When determining sanctions, the appeal authority may consider the complete record of the ~~((accused's))~~ respondent's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the ~~((accused))~~ respondent, and, in cases of ~~((harassment or))~~ sexual misconduct, notify the complainant and victim, with a brief written statement setting forth the outcome of the appeal.

(10) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

(11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-140 Interim restriction. In situations where there is cause to believe that a student or a student

organization (~~(endangers)~~) poses an immediate danger to the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the charges to the conduct review officer, who will process such charges in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

(1) Interim restriction actions may only be imposed in the following situations:

(a) When a student or student organization poses an immediate threat to:

- (i) The health, safety or welfare of any part of the university community or public at large;
- (ii) The student's own physical safety and well-being; or
- (iii) Any property of the university community; or

(b) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community (~~(or~~

~~(c) When a student is undergoing criminal proceedings for any felony charge).~~

(2) During the interim restriction period, a student may be restricted by any or all of the following means:

(a) Denial of access (~~(s)~~) including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(b) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be placed on a student.

~~(4) ((All interim restrictions that involve any type of restriction from any university premises will be accomplished by giving a notice against trespass. The notice against trespass may be given by any manner specified in WAC 172-122-200.~~

~~(5))~~ The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) constitute a violation of the student conduct code; ~~(and)~~

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) The date, time, and location for an emergency appeal hearing with the vice president for student affairs.

~~((6)) (5)~~ In cases alleging sexual (~~harassment, sexual misconduct, domestic violence, relationship violence, and/or stalking~~) misconduct, the complainant will be provided with

notice of any interim restrictions that relate directly to the complainant.

~~((7)) (6)~~ Emergency appeal(s) hearing.

~~(a) ((In all cases, the student or student organization may appeal the interim restriction to the vice president for student affairs.))~~ If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal hearing with the vice president for student affairs, or designee, within ten business days after the interim suspension is served. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within ten business days after service of the interim restriction.

(b) The vice president for student affairs, or designee, will conduct an emergency appeals hearing with the student or student organization subject to the interim restriction. The student may appear at the hearing telephonically and may be represented by counsel.

(c) In cases alleging ((sexual harassment,)) sexual misconduct ((, domestic violence, relationship violence, and stalking)), if an interim restriction is imposed, the student, the student organization, and the complainant may appeal the interim restriction using the process outlined in this subsection. Also, in such cases, if an appeal is filed, all parties shall be given notice of the appeal and shall be provided the opportunity to participate in the appeal proceeding.

~~((e) Appeals must be submitted, in writing, within ten business days after the interim restriction action is taken, unless the student requests an extension. Requests for extension will only be granted to review the following issues:~~

~~(i) The reliability of the information concerning the student's behavior; and~~

~~(ii) Whether the student's continued presence or prior or present behavior warrants interim restriction for the causes listed in subsection (1) of this section.~~

~~(d) As a result of the appeal, the vice president for student affairs will schedule a meeting with the accused.)~~ (d) The vice president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The ((accused)) respondent and the complainant, if he/she has the right to be present under (b) of this subsection, may have an advisor present at the meeting ((so long as the name of that person is provided to the director of SRR at least two business days prior to the scheduled meeting)).

(e) During the ((appeal meeting)) emergency appeal hearing, the vice president for student affairs will review available materials and statements. After the meeting, the vice president for student affairs may uphold, modify, or terminate the interim restriction action.

~~((8)) (f)~~ The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

~~((9)) (g)~~ Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy.

(2) Acts of social misconduct.

(a) Abuse. Physical abuse, verbal abuse, and/or other conduct which threatens or endangers the health or safety of any person.

(b) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Objectively hostile or offensive; and

(v) Creates an intimidating and/or threatening environment which produces a risk of psychological and/or physical harm.

(c) Domestic violence and relationship violence.

(i) Domestic violence means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(B) Sexual assault of one family or household member by another; or

(C) Stalking of one family or household member by another family or household member.

(ii) Relationship violence is a type of domestic violence, except the acts specified above are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The nature of the relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

(d) Harassment, gender-based harassment, and sexual harassment.

(i) Harassment is conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities.

(ii) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(iii) Sexual harassment is unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's

ability to work, study, participate in, or benefit from the university's programs or activities.

In determining whether any of the above-listed types of harassment are severe, pervasive, or persistent, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the victim; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(e) Retaliation. Any actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code is prohibited and is a separate violation of this code.

(f) Sexual misconduct. (~~Sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion, are types of sexual misconduct.~~) Sexual misconduct includes, but is not limited to, sexual violence; indecent liberties; indecent exposure; sexual exhibitionism; sex-based cyber harassment; prostitution or the solicitation of a prostitute; peeping or other voyeurism; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity. Sexual violence is sexual intercourse or sexual contact with a person without his or her consent or when the person is incapable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. (~~Sexual misconduct also includes, but is not limited to, indecent liberties, indecent exposure, sexual exhibitionism, sex-based cyber harassment, prostitution or the solicitation of a prostitute, peeping or other voyeurism, or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.~~)

(g) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

(h) Unauthorized use of electronic or other devices: Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously

taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(3) Property violations. Theft of, damage to, or misuse of another person's or entity's property.

(4) Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

(5) Failure to comply.

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

(6) Trespassing/unauthorized use of keys.

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of ~~((marijuana, drug paraphernalia and/or))~~ illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

(10) Hazing. Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

~~((d) Demonstration. Participation in a campus demonstration which violates university regulations.))~~

(12) Violations of other laws, regulations and policies.

- (a) Violation of a local, county, state, or federal law.
- (b) Violation of other university policies, regulations, or handbook provisions.
- (13) Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.
- (14) Acts against the administration of this code.
 - (a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.
 - (b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.
 - (c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.
- (15) Other responsibilities:
 - (a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.
 - (b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:
 - (i) The laws of the host country;
 - (ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;
 - (iii) Any other agreements related to the student's study program in the foreign country; and
 - (iv) The student conduct code.
 - (16) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-210 Sanctions. If any student or student organization is found to have committed any of the offenses described in WAC 172-121-200, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions.

- (1) Individual student sanctions:
 - (a) Admonition: An oral statement to a student that he/she has violated university rules and regulations.
 - (b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in

more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

- (i) Restricting the student's university-related privileges;
- (ii) Limiting the student's participation in extra-curricular activities; and/or
- (iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well

as the suspension period and what conditions of readmission, if any, are ordered. Suspension is subject to the processes outlined in this chapter except any suspension must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(k) **Expulsion:** Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice against trespass. The notice against trespass may be given by any manner specified in chapter 9A.52 RCW. Expulsion is subject to the processes outlined in this chapter except any expulsion must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed.

(l) **Loss of institutional, financial aid funds:** Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) **Revocation of degree:** A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) **Student organizations and/or group sanctions:** Any of the above sanctions may be imposed in addition to those listed below:

(a) **Probation:** Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) **Social probation:** Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) **Restriction:** The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) **Revocation:** The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Revocation is subject to the processes outlined in this chapter except any revocation must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(e) **Additional sanctions:** In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of university facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

NEW SECTION

WAC 172-121-123 Sexual misconduct hearing procedures. (1) **Scheduling and notification.** Sexual misconduct hearings are used for sexual misconduct allegations which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion or would be considered felony-level sexual misconduct. Sexual misconduct hearings are conducted by a conduct review officer (CRO). The CRO shall schedule the hearing and notify the complainant/victim and respondent of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so.

(2) **Evidence.**

(a) **Evidence:** Pertinent records exhibits and written statements may be accepted as information for consideration by the CRO in accordance with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent and the complainant/victim have the right to view all material presented during the course of the hearing.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(3) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(4) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The CRO, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive, or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(6) Witnesses.

(a) The complainant, victim, respondent, and CRO may present witnesses at council review hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required

to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five days prior to the hearing. The CRO will comply with WAC 10-08-150.

(7) Questioning:

(a) The complainant, the respondent, and their advisors may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the CRO. The CRO may ask such questions, but is not required to do so. The CRO may reject any question deemed inappropriate, irrelevant, immaterial or unduly repetitious. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) During a conduct review hearing, only the CRO may pose questions to persons appearing at the hearing. The CRO may question any parties and witnesses.

(8) The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate, subject to subsection (2) of this section.

(9) Deliberations and sanctions. Following the hearing, the CRO will determine whether the respondent violated the student conduct code. If the CRO determines the respondent violated the student conduct code, the CRO shall then decide what sanctions shall be imposed. The CRO shall issue a decision including his/her findings, conclusions, and rationale. Such decision should be issued within seven business days from the sexual misconduct hearing. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. The findings shall be based exclusively on the evidence provided at the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available post-hearing remedies.

(10) Notification. The CRO shall forward his/her decision to the director of SRR. The director of SRR shall serve the respondent with a brief written statement setting forth the CRO's decision and notice of the right to appeal. The victim shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct occurred;

(b) The victim's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

WSR 17-17-122
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-209—Filed August 21, 2017, 4:45 p.m., effective August 21, 2017, 4:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for Puget Sound recreational salmon fishery.

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

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. This emergency rule is 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 21, 2017.

J. W. Unsworth
Director

NEW SECTION

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

(1) **Catch Record Card Area 5:** Daily limit of 2 salmon. Release chum, Chinook, and wild coho. No additional pink or sockeye salmon limit in addition to the daily limit.

(2) **Catch Record Card Area 7:** Excluding Bellingham Bay: Release coho. No additional pink salmon limit in addition to the daily limit.

(3) **Catch Record Card Area 8-2:**

(a) Tulalip Bay: Chinook and coho can be kept as part of the salmon daily limit. No additional pink salmon limit in addition to the daily limit.

(b) It is permissible to fish from shore in waters on Whidbey Island from Possession Point (Catch Record Card Area 8-2 and 9 border) north to the northern boundary of Possession Point Waterfront Park: Daily limit of 2 hatchery coho. No additional pink salmon limit in addition to the daily limit.

(4) **Catch Record Card Area 9:**

(a) Closed to salmon angling except it is permissible to fish from shore in Area 9 and waters south of a line from Foulweather Bluff to Olele Point: Daily limit of 2 salmon. Release chum, Chinook, and wild coho. No additional pink salmon limit in addition to the daily limit.

(b) Closed to salmon angling east of a line from Teekalet Bluff extending north to a line with the intersection of NE Cliffside Road and Hood Canal Drive NE.

(c) Edmonds Fishing Pier is open year-round: Daily limit of 2 salmon. No more than one may be a Chinook. Coho may be kept as part of the daily salmon limit. No additional pink salmon limit in addition to the daily limit.

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

(a) Area 10 and Sinclair Inlet: No additional pink salmon limit in addition to the daily limit.

(b) It is permissible to fish for salmon in free-flowing freshwaters downstream of Chico Creek mouth.

(c) Duwamish Waterway downstream from an east-west line through the southernmost tip of Harbor Island to a line extending from Jack Block Park through the northernmost tip of Harbor Island extending to shore northeast of the North Waterway (47°35.47'N, 122°20.58'W): Night closure, anti-snagging rule and only fish hooked inside the mouth may be retained.

(d) August 25 through August 27: those waters of Elliott Bay east of a line from West Point to Alki Point to a line from Jack Block Park through the northernmost tip of Harbor Island extending to shore northeast of the North Waterway: Daily limit of 2 salmon. Release chum, Chinook and wild coho. Bait is permitted and single-point hooks larger than one-half inch from the point to the shank may be used.

(e) Elliott Bay Fishing Pier at Terminal 86, Seacrest Pier, Waterman Pier, Bremerton Boardwalk and Illahee State Park Pier is open year-round: Daily limit of 2 salmon. No more than one may be a Chinook. Coho may be kept as part of the daily salmon limit. No additional pink salmon limit in addition to the daily limit.

(6) Catch Record Card Area 11:

(a) Coho can be kept as part of the daily limit. No additional pink salmon limit in addition to the daily limit.

(b) Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier and Point Defiance Boathouse Dock is open year-round: Daily limit of 2 salmon. No more than one may be a Chinook. Coho may be kept as part of the daily salmon limit. No additional pink salmon limit in addition to the daily limit.

(7) Catch Record Card Area 12 (south of Ayock Point): It is unlawful to fish from any Hoodspout Salmon Hatchery structure except persons with disabilities who permanently use a wheelchair and who have a designated harvester card under WAC 220-220-240 may fish from the ADA-access site at the Hoodspout Salmon Hatchery as long as persons follow all applicable department rules.

(8) Catch Record Card Area 13:

(a) Hatchery coho can be kept as part of the daily limit. No additional pink salmon limit in addition to the daily limit.

(b) Fox Island Public Fishing Pier is open year-round: Daily limit of 2 salmon. No more than one may be a Chinook. Coho may be kept as part of the daily salmon limit. No additional pink salmon limit in addition to the daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-313-06000H Puget Sound salmon—Saltwater seasons and daily limits. (17-185)

**WSR 17-17-138
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-212—Filed August 22, 2017, 2:18 p.m., effective August 22, 2017, 2:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for lawfully possessing and selling Atlantic salmon.

Citation of Rules Affected by this Order: Amending WAC 220-353-030.

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: Cooke Aquaculture Pacific, the owner of a net pen facility near Cypress Island, Washington (near the San Juan Islands) has indicated that structural damage to one of their Atlantic salmon net pens was caused by extraordinary strong tidal currents on August 20, 2017, resulting in the escape of several thousand Atlantic salmon adults. This emergency rule is needed to facilitate removal of

this nonnative species by allowing retention of these fish during previously scheduled commercial fisheries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 22, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-353-03000A General provisions—Lawful and unlawful acts—Food fish other than salmon. Notwithstanding the provisions of WAC 220-353-030, effective immediately until further notice, it is permissible to possess and sell Atlantic salmon when it is lawful to fish and retain salmon as provided in chapter 220-47 WAC and chapter 220-354 WAC.

**WSR 17-17-144
EMERGENCY RULES
DEPARTMENT OF HEALTH**

(Pharmacy Quality Assurance Commission)

[Filed August 22, 2017, 3:47 p.m., effective August 22, 2017, 3:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-887-134, the pharmacy quality assurance commission is adopting a new emergency rule to add fentanyl derivatives not approved by the Food and Drug Administration, synthetic cannabinoids, synthetic cathinones, and synthetic opioids to Schedule I under the Controlled Substance[s] Act continuing to make it illegal to sell, possess, manufacture, or deliver chemicals or products containing the substances. This emergency rule supersedes WSR 17-17-055 filed on Friday, August 11, 2017. A new emergency rule is needed because there were two significant errors in the first one. The descriptions of both synthetic cathinones and synthetic opioids to be scheduled refer to synthetic cannabinoids. Subsection (2)(c) and (d) of the emergency rule language have been updated to have the proper descriptions of synthetic cathinones and synthetic opioids respectively.

Citation of Rules Affected by this Order: New WAC 246-887-134.

Statutory Authority for Adoption: RCW 69.50.201, 69.50.203.

Other Authority: RCW 18.64.005(7).

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: These substances are readily available to the public over the internet, in tobacco and smoke shops, drug paraphernalia shops and convenience stores. Although labeled not for human consumption, these drugs are being marketed as a harmless alternative to illegal drugs. RCW 69.50.201 allows the commission to consider the Drug Enforcement Administration findings, adopt rules for substances with potential for abuse, and directs the commission to add substances to chapter 69.50 RCW Uniform Controlled Substances Act if designated as a controlled substance under federal law. RCW 69.50.201(e) allows the commission to schedule substances that pose an imminent hazard to public safety by emergency rule.

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

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

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

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

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

Date Adopted: August 22, 2017.

Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

NEW SECTION

WAC 246-887-134 Adding fentanyl derivatives not approved by the Food and Drug Administration (FDA), synthetic cannabinoids, synthetic cathinones, and synthetic opioids to Schedule I. (1) The Washington state pharmacy quality assurance commission finds the following substances have high potential for abuse and have no medical use in treatment in the United States or they lack accepted safety for use in treatment under medical supervision. The commission, therefore, places each of the following substances in Schedule I.

(2) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.

(a) Fentanyl derivatives not approved by the FDA. Unless specifically excepted or unless listed in another schedule, any of the following fentanyl derivatives, their

salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)

(ii) Butyryl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide)

(iii) Beta-Hydroxythiofentanyl (N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl))

(iv) Furanyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)

(b) Synthetic cannabinoids (Spice) and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic cannabinoid derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Cannabicyclohexanol, CP-47,497 C8 Homologue (5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol)

(ii) MAB-CHMINACA(N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (also known as ADB-CHMINACA)

(iii) UR-144(1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)

(iv) XLR11([1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone) (also known as 5-fluoro-UR-144)

(v) AKB48(N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide) (also known as APINACA)

(vi) PB-22 (quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate) (also known as QUPIC)

(vii) 5F-PB-22(quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (also known as 5-fluoro-PB-22)

(viii) AB-FUBINACA(N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)

(ix) ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)

(x) AB-PINACA (N-[1-Amino-3-methyl-1-oxo-2-butanyl]-1-pentyl-1H-indazole-3-carboxamide)

(xi) AB-CHMINACA (N-[1-Amino-3-methyl-1-oxo-2-butanyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)

(xii) THJ-2201([1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)

(xiii) 5F-ADB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) (also known as 5F-MDMB-PINACA)

(xiv) 5F-AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)

(xv) 5F-APINACA (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide) (also known as 5F-AKB48)

(xvi) ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)

(xvii) MDMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (also known as MMB-CHMINACA)

(xviii) MDMB-FUBINCACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)

(c) Synthetic cathinones (Bath salts) and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic cathinones derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) 4-MEC (4-methyl-N-ethylcathinone)

(ii) 4-MePPP (4-methyl-alpha-pyrrolidinopropiophenone)

(iii) [alpha]-PVP (alpha-pyrrolidinopentiophenone)

(iv) Pentedrone (2-(methylamino)-1-phenylpentan-1-one)

(v) 4-FMC, Flephedrone (4-fluoro-N-methylcathinone)

(vi) 3-FMC (3-fluoro-N-methylcathinone)

(vii) Naphyrone (1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one)

(viii) [alpha]-PBP (alpha-pyrrolidinobutiophenone)

(d) Synthetic opioids and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic opioid derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)

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 17-17-168
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 23, 2017, 10:22 a.m., effective August 23, 2017, 10:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Align the rules for the highly capable program to the statutory changes made [made] to the program by EHB 2242 (2017).

Citation of Rules Affected by this Order: Amending WAC 392-170-030, 392-170-045, 392-170-055, and 392-170-075.

Statutory Authority for Adoption: RCW 28A.185.050.

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: Section 412 of EHB 2242 (2017) amended RCW 28A.185.020 to require that school district practices for identifying the most highly capable students must prioritize equitable identification of low-income students. These changes go into effect for the 2017-18 school

year, which is when the new funding will start. State law therefore requires immediate adoption of the rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

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

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

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

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

Date Adopted: August 23, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-07-020, filed 3/12/13, effective 4/12/13)

WAC 392-170-030 Substance of annual school district plan. The school district's annual plan shall contain the following:

(1) A report of the number of K-12 students who are highly capable that the district expects to serve by grade level;

(2) A description of the district's plan to identify students; consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students;

(3) A description of the highly capable program goals;

(4) A description of the services the highly capable program will offer;

(5) A description of the instructional program the highly capable program will provide;

(6) A description of ongoing professional development for educators of students who are highly capable and general education staff;

(7) A description of how the highly capable program will be evaluated that includes information on how the district's highly capable program goals and student achievement outcomes will be measured;

(8) A fiscal report; and

(9) Assurances signed by the school district's authorized representative that the district will comply with all applicable statutes and regulations.

AMENDATORY SECTION (Amending WSR 15-14-034, filed 6/23/15, effective 7/24/15)

WAC 392-170-045 Referral process for highly capable students. Each school district shall establish written procedures for the referral of students to participate in programs for highly capable students. Such procedures shall permit

referrals based on data or evidence from teachers, other staff, parents, students, and members of the community.

A district's referral procedure for students who are highly capable may include screening procedures to eliminate students who, based on clear, current evidence, do not qualify for eligibility under WAC 392-170-055.

Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

AMENDATORY SECTION (Amending WSR 13-07-020, filed 3/12/13, effective 4/12/13)

WAC 392-170-055 Assessment process for selection as highly capable student. (1) Students nominated for selection as a highly capable student, unless eliminated through screening as provided in WAC 392-170-045, shall be assessed by qualified district personnel;

(2) Districts shall use multiple objective criteria for identification of students who are among the most highly capable. There is no single prescribed method for identification of students among the most highly capable; ~~((and))~~

(3) Districts shall have a clearly defined and written assessment process; and

(4) Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

AMENDATORY SECTION (Amending WSR 15-14-034, filed 6/23/15, effective 7/24/15)

WAC 392-170-075 Selection of most highly capable. Each school district's board of directors shall adopt a selection policy and school district shall establish written procedures for the selection of the most highly capable students by the multidisciplinary selection committee. Such policy and selection procedures:

(1) Shall not violate federal and state civil rights laws including, without limitation, chapters 28A.640 and 28A.642 RCW;

(2) Shall be based on professional judgment as to which students will benefit the most from inclusion in the district's program; ~~((and))~~

(3) Shall be based on a selection system that determines which students are the most highly capable as defined under WAC 392-170-055, and other data collected in the assessment process; and

(4) Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

WSR 17-17-169

EMERGENCY RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 23, 2017, 10:23 a.m., effective August 23, 2017, 10:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Align the rules for the learning assistance program to the statutory changes made [made] to the program by EHB 2242 (2017).

Citation of Rules Affected by this Order: Amending WAC 392-162-005, 392-162-010, 392-162-020, 392-162-033, 392-162-036, 392-162-041, 392-162-054, 392-162-112, and 392-122-605.

Statutory Authority for Adoption: RCW 28A.165.075.

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: Section 412 of EHB 2242 (2017) amended chapter 28A.165 RCW (learning assistance program) and RCW 28A.150.260 (the prototypical funding formula statute) to create a new learning assistance program allocation for high poverty-based schools. These changes go into effect for the 2017-18 school year, which is when the new funding will start. State law therefore requires immediate adoption of the rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 9, Repealed 0.

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

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

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

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

Date Adopted: August 23, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due. The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or school operated pursuant to a state-tribe education compact if the school district, charter school, or compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include two allocations: A district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system.

(b)(i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least fifty percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October headcount enrollment in grades K-12 for free and reduced-price lunch. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 for the prior year.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of ~~((a))~~ the learning assistance program ~~((designed to provide learning assistance to public school students enrolled in grades kindergarten through twelve who score below standard in English language arts or mathematics for his or her grade level))~~.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-010 Purpose. ~~((The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to assist underachieving students enrolled in grades kindergarten through twelve who score below standard in English language arts and mathematics for his or her grade level.))~~ The learning assistance program requirements in this chapter are designed to:

(1) Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;

(2) Promote the use of data when developing programs to assist ~~((underachieving))~~ students who are not meeting academic standards and reduce disruptive behaviors in the classroom;

(3) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist ~~((underachieving))~~ students who are not meeting academic standards and reduce disruptive behaviors in the classroom; and

(4) Guide school districts in providing extended learning opportunities to assist ~~((underachieving))~~ K-12 students who are not meeting academic standards in English language arts or mathematics, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-020 Definition—Learning assistance program (LAP). (1) As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students enrolled in grades kindergarten through twelve who do not meet state English language arts or mathematics standards by providing supplemental instruction and services to those students.

(2) School districts implementing a learning assistance program must first focus on addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills.

(a) A district may meet this requirement during the regular school year by ensuring that of the total number of students in grades kindergarten through four served by the learning assistance program, approximately fifty percent are students ~~((enrolled in grades kindergarten through four))~~ receiving English language arts services. Students served under readiness to learn programs provided under WAC 392-162-041 (1)(g) are excluded from this calculation.

(b) A district may serve a threshold lower than fifty percent if it demonstrates a lesser need through one of the following data sources:

(i) The district's prior year statewide assessment scores for third and fourth grade reading;

(ii) The district's prior year's reported number of kindergarten through grade four students reading on grade level under RCW 28A.320.203;

(iii) Districts serving a lower threshold under (b)(i) or (ii) of this subsection must be approved to do so at the start of the school year by the office of the superintendent of public instruction.

The learning assistance program may then be used to support ~~((underachieving))~~ students who are not meeting academic standards in grades kindergarten through twelve by providing supplemental English language arts or mathematics instruction, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, by addressing the needs of eleventh and twelfth grade students to assist them in meeting state and district graduation requirements, and to reduce disruptive behaviors in the classroom.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

WAC 392-162-033 Definition—(~~Underachieving~~) Students who are not meeting academic standards. As used in this chapter, the term "~~((underachieving))~~ students who are not meeting academic standards" means students with the greatest academic (~~((deficits))~~) needs in basic skills as identified by statewide, school, or district assessments or other performance tools.

AMENDATORY SECTION (Amending WSR 09-24-075, filed 11/30/09, effective 12/31/09)

WAC 392-162-036 Definition—Extended learning opportunities. As used in this chapter the term "extended learning opportunities" means a program of learning assistance in addition to the required basic education instruction designed to improve the educational performance of (~~((underachieving))~~) students who are not meeting academic standards selected under WAC 392-162-080. The minimum allocation for the learning assistance program shall provide an extended school day and extended school year for each level of school and a per student allocation for maintenance, supplies, and operating costs.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-041 Best practices. (1) Best practices are to be used to provide learning assistance program services to identified learning assistance students. The district must select and implement the best practices that are designed to increase student achievement and are aligned with research. To the extent they are included as a best practice or strategy in one of the state menus on or an alternative allowed under subsection (2)(b) of this section, the following are services and activities that may be supported by the learning assistance program:

- (a) Extended learning opportunities occurring:
 - (i) Before or after the regular school day;
 - (ii) On Saturday; and
 - (iii) Beyond the regular school year.
- (b) Extended learning opportunities provided under RCW 28A.320.190. Eligibility is for:
 - (i) Eleventh and twelfth grade students not on track to meet local or state graduation requirements; and
 - (ii) Students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade.
- (c) Professional development for certificated and classified staff that focuses on:
 - (i) The needs of a diverse student population;
 - (ii) Specific literacy and mathematics content and instructional strategies; and
 - (iii) The use of student work to guide effective instruction and appropriate assistance.
- (d) Consultant teachers to assist in implementing effective instructional practices by teachers serving participating students.
- (e) Tutoring support for participating students.

(f) Outreach activities and support for parents of participating students, including employing parent and family engagement coordinators.

(g) Up to five percent of district's learning assistance program base allocation may be used to deliver a readiness to learn program. Students served are to be significantly at-risk of not being successful in school and services must be focused on reducing barriers to learning, increasing student engagement, and enhancing students' readiness to learn. The program may include academic or nonacademic supports offered by the district or through development of partnerships with community-based organizations, educational service districts, and other local agencies. The school board must approve in an open meeting any community-based organization or local agency before learning assistance program funds may be expended.

(2) Beginning in the 2016-17 school year districts must either:

(a) Select a practice or strategy that is on one of the state-approved menus for the learning assistance program; or

(b) Use a practice or strategy that is not on the state menus for up to two years. Districts must annually notify the office of the superintendent of public instruction if selecting an alternative practice or strategy. At the end of the two years, the district must be able to demonstrate improved outcomes for participating learning assistance program students. If the district is able to demonstrate improved outcomes commensurate with the state approved menu for such students, the office of the superintendent of public instruction will approve the use of the alternative practice for one additional year. For each subsequent year, the district must provide data that demonstrates that participating students are meeting or exceeding academic achievement compared to those students who are being served by a state approved best practices and strategy.

(3) School districts may enter into cooperative agreements with state agencies, local governments, or school districts for administrative or operational costs needed to provide services in accordance with the state menus developed beginning in 2016-17.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-054 (~~((Definition—District eligibility and distribution))~~) Allocation, supplement not supplant, and use of funds. (1) The funds for the learning assistance program shall be (~~((appropriated in accordance with the Omnibus Appropriations Act and RCW 28A.150.260. The distribution formula is for school district allocation purposes only, but funds appropriated for the))~~) allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be distributed to the school building that generated the funding and may not supplant the learning assistance program base allocation.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through

28A.165.065. (~~(A school district's funded students for the learning assistance program shall be the sum of the district's full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year.)~~)

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-112 Carry over of funds. (1) Districts may carry over from one year to the next up to ten percent of the ~~((LAP funds—state or education legacy trust funds))~~ learning assistance program base allocation provided allocated under ((this program)) WAC 392-122-605; however, carry-over funds shall be expended for the learning assistance program.

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carryover must be expended for the learning assistance program and for the specific school generating the allocation.

WSR 17-17-171
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-213—Filed August 23, 2017, 10:37 a.m., effective August 23, 2017, 10:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000I; and amending WAC 220-340-520.

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

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

Reasons for this Finding: The 2017 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) implements a spot shrimp weekly limit of three hundred pounds Catch Area 23A-C/23B; and (2) implements a spot shrimp weekly limit of two hundred pounds in Catch Area 23A-W. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 23, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-52000J Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 2W, 3 and 5 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 2W and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E and 25A are closed to the harvest of spot shrimp.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per week from Shrimp Management Area 2W. The non-spot shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher or fisher's alternate operator to exceed 600 pounds per week, with the following exceptions:

a. It unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 300 pounds per week in Catch Areas 23A-C and 23B, or to exceed 200 pounds per week in Catch Area 23A-W.

(d) The spot shrimp catch accounting week is Wednesday through Tuesday.

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(f) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open.

(d) That portion of Catch Area 21A within SMA 1B is open.

(e) Catch Area 20A is open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000I Puget Sound shrimp pot and beam trawl fishery—Season. (17-200)