

WSR 19-21-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-244—Filed October 2, 2019, 3:12 p.m., effective October 2, 2019, 3:12 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 220-359-02000R; and amending WAC 220-359-020.

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

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

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

Reasons for this Finding: This emergency rule extends treaty drift gillnet fisheries throughout SMCRA 1F, 1G, and 1H (Zone 6) due to the availability of fish for harvest. This rule is consistent with actions of the Columbia River Compact on June 12, June 27, July 25, July 30, August 7, August 12, September 5, September 12, September 17, September 24, and October 2, 2019. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

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

Date Adopted: October 2, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) Open Areas: Zone 6 tributary fisheries

(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) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line. Gillnets may be used only in Drano Lake

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence. Sales of fish are allowed after the open period concludes, as long as the fish were landed during the open period.

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon of legal size may be sold if landed during the open area and period for the setline fishery within that pool, otherwise 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 sanctuary closures remain in place for this gear.

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

(a) Season: 6 AM Thursday October 3 to 6 PM Saturday October 5, 2019

(b) Gear: Set and Drift gillnets with an 8-inch minimum mesh restriction

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. 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 closed areas applicable to gillnet gear. The Spring Creek Hatchery sanctuary will be reduced to a 150 foot radius around the hatchery ladder.

(4) Open Areas: Drano Lake and Klickitat River

(a) Season: Immediately until further notice, and only during days and times open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(5) Open Areas: Areas downstream of Bonneville Dam defined in tribal/state MOU's/MOA's.

(a) Season: Immediately through 11:59 PM October 31.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale.

(6) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000R Columbia River salmon seasons above Bonneville Dam. (19-231)

WSR 19-21-008

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-248—Filed October 3, 2019, 3:20 p.m., effective October 5, 2019]

Effective Date of Rule: October 5, 2019.

Purpose: Amend recreational salmon fishing rules for the Snake 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 needed to close retention of wild adult Chinook in areas of the Snake River open to salmon. Impacts to wild fall Chinook are approaching the allowable quota. Closing fisheries to the retention of unclipped Chinook affords managers to continue to allow fishing opportunity for adipose clipped fall Chinook while keeping the ongoing steelhead fishery in portions of the Snake River within allowable incidental mortality impacts. 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: October 3, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000R Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective October 5, 2019:

(1) **Grande Ronde River (Asotin County): from the mouth to the Washington/Oregon boundary:** Effective immediately until further notice: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead after their daily limit has been retained.

(2) **Snake River (Franklin/Walla Wall Counties):**

(a) **From the mouth (Burbank-to-Pasco railroad bridge at river mile 1.25) to the red river marker (Marker 28) on the south shore of the Snake River:** Steelhead, effective immediately through December 31, 2019: Closed to fishing for and retaining.

(b) **From the red river marker (Marker 28) on the south shore of the Snake River to the Highway 261 Bridge (about 1.4 miles):**

(i) Hooks must be barbless when fishing for salmon.

(ii) Anglers may not continue to fish for salmon after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead, effective immediately through December 31, 2019: Closed to fishing and retaining.

(iv) Salmon, effective immediately through October 31: Daily limit 6 adult hatchery Chinook, no daily limit for any jack Chinook; release all other salmon.

(c) **The Highway 261 Bridge to Lower Granite Dam:** Steelhead, effective through December 31, 2019: Closed to fishing for and retaining.

(d) **From Lower Granite Dam to the downstream edge of the large power lines crossing the Snake River (just upstream from West Evans Road on the south shore):** Steelhead, effective through December 31, 2019: Closed to fishing for and retaining.

(e) **From the downstream edge of the large power lines crossing the Snake River (just upstream from West Evans Road on the south shore) upstream to Couse Creek Boat Ramp:**

(i) Hooks must be barbless when fishing for salmon.

(ii) Anglers may not continue to fish for salmon after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead, effective immediately through December 31, 2019: Closed to fishing for and retaining.

(iv) Salmon, effective immediately through October 13, 2019: Daily limit 6 adult hatchery Chinook; no daily limit for any jack Chinook; release all other salmon.

(f) **From Couse Creek Boat Ramp to ID/OR border:**

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead, effective immediately through December 31, 2019: Daily limit 1 hatchery steelhead.

(iv) Salmon, effective immediately through October 31, 2019: Daily limit 6 adult hatchery Chinook, no daily limit for any jack Chinook. Release all other salmon.

(3) **Touchet River (Walla Walla County): from mouth to the confluence of North and South Forks:** Effective immediately until further notice: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead once their daily limit has been retained.

(4) **Tucannon River (Columbia/Garfield Counties): from mouth to the Tucannon Hatchery Road Bridge:** Effective immediately until further notice: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead once their daily limit has been retained.

(5) **Walla Walla River (Walla Walla County): from mouth to the Washington/Oregon border:** Effective immediately until further notice: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead once their daily limit has been retained.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective October 5, 2019:

WAC 220-312-05000Q Freshwater exceptions to statewide rules—Eastside. (19-241)

WSR 19-21-009**EMERGENCY RULES****DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-243—Filed October 3, 2019, 3:22 p.m., effective October 7, 2019]

Effective Date of Rule: October 7, 2019.

Purpose: Amend recreational fishing rules for the Skagit River.

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

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

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

Reasons for this Finding: This emergency rule is needed to close a portion of the Skagit River to all fishing to avoid gear conflicts with treaty fisheries during these scheduled dates. These closures were agreed to with comanagers during the 2019/2020 North of Falcon process. Exact dates were to be determined based on in-season information such as stream flow and run timing. These dates have now been set, 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: October 3, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Z Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040:

Skagit River: From the Highway 9 Bridge to the Baker River - Closed to all fishing the days of October 7 through October 9, 2019.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 10, 2019:

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

WSR 19-21-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-249—Filed October 4, 2019, 2:53 p.m., effective October 7, 2019]

Effective Date of Rule: October 7, 2019.

Purpose: Amend Puget Sound commercial sea cucumber rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000S; 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 necessary to close the Puget Sound commercial sea cucumber fishery in Sea Cucumber Management District 2-1 (23A, 23C,

23D, 29) and increase the weekly trip limit in Management District 1 (20A, 20B, 21A, 21B, 22A, 22G [22B]). The quota for Sea Cucumber Management District 2-1 is expected to be reached by Sunday, October 6, 2019. A harvestable surplus of sea cucumbers remain in Management District 1. 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: October 4, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000T Commercial sea cucumber fishery. Notwithstanding the provisions of WAC 220-340-730, effective October 7, 2019, 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 Monday through Sunday of each week in the following Marine Fish- Shellfish Catch Reporting Areas of Sea Cucumber District 1: 20A, 20B, 21A, 21B, 22A, and 22B.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1000 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 7, 2019:

WAC 220-340-73000S Commercial sea cucumber fishery.
(19-237)

WSR 19-21-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-251—Filed October 7, 2019, 1:35 p.m., effective October 7, 2019, 1:35 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreation salmon fishing rules for Puget Sound.

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

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

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

Reasons for this Finding: This rule is necessary to return recreational salmon daily limits to permanent rule in Marine Area 13. Escapement and hatchery goals are expected to be met for coho stocks in Marine Area 13, therefore daily limit restrictions for coho in this area are no longer needed. 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: October 7, 2019.

Kelly Susewind
Director

NEW SECTION

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

1. Catch Record Card Area 8-1, effective immediately through October 31, 2019:

(a) Release all pink salmon.

(b) No more than 1 coho may be retained as part of the salmon daily limit.

2. Catch Record Card Area 10:

(a) Effective immediately through November 15, 2019: Release all Chinook salmon.

(b) Effective immediately through November 15, 2019: No more than 1 coho may be retained as part of the salmon daily limit.

REPEALER

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

WAC 220-313-06000L Puget Sound salmon—Saltwater seasons and daily limits. (19-230)

WSR 19-21-031 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-252—Filed October 7, 2019, 4:27 p.m., effective October 7, 2019, 4:27 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Upriver bright Chinook and steelhead impacts are available to conduct commercial Chinook target fishing as planned preseason. 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 the compact action of July 30, August 12, August 28, September 25, and October 7, 2019. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2018-2027 *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: October 7, 2019.

Nate Pamplin
for Kelly Susewind
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 220-358-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point/South Channel

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights Immediately through October 25

Open Hours: 6 PM - 10 AM

(b) **Area:** The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island.

(i) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(ii) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(c) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

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

(d) **Allowable Sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

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

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights - Immediately through October 25

Open hours: 6 PM - 10 AM

(b) **Area:**

The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough

upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Bar-ense Road Bridge.

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

(c) Gear:

Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(d) Allowable sales: Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

(e) Miscellaneous: Permanent transportation rules in effect.

(3) Deep River Select Area

(a) Dates:

Monday, Tuesday, Wednesday, and Thursday nights immediately through October 18

Monday, Tuesday, Wednesday, Thursday, and Friday nights Oct. 21-Nov. 16

Monday, Tuesday, Wednesday, and Thursday nights November 18-further notice.

Open hours: 6 PM - 9 AM immediately to November 2, 5 PM - 8 AM thereafter

(b) Area: The Deep River fishing area includes 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.

(c) Gear: Gillnets. 6-inch maximum. 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. It is unlawful to operate in any river, stream, or channel any gill-net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level.

(d) Allowable sales: Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

(e) Miscellaneous: Permanent transportation rules in effect.

(4) The white sturgeon possession and sales limit includes all open Select Area fisheries.

(5) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)) in Select Area Fisheries.

(4) Coho commercial tangle net fishery

(a) Dates:

Wednesday October 9

Friday October 11

Monday October 14

Wednesday October 16

Open hours: 6 AM - 6 PM

(b) Area: Zones 1-3. Upper deadline 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: Elochoman-A, Cowlitz River, Kalama-A and Lewis-A

(d) Gear: Drift nets only. Maximum mesh size is 3-3/4 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms.

A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(e) Allowable sales: Adipose fin-clipped coho salmon, pink salmon, and Chinook salmon. Sturgeon and chum salmon may not be possessed or sold.

(f) Miscellaneous: Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 30 minutes.

Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

Measuring mesh size: Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the out-

side of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

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

Multiple net rule in effect: Which means nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

24-hour quick reporting required is for Washington wholesale dealers, per WAC 220-352-315.

Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(4) The white sturgeon possession and sales limit includes all open Select Area fisheries.

(5) Zones 4-5

(a) **Dates:** 7 PM Tuesday October 8 to 7 AM Wednesday October 9

7 PM Thursday October 10 to 7 AM Friday October 11

7 PM Sunday October 13 to 7 AM Monday October 14

7 PM Tuesday October 15 to 7 AM Wednesday October 16

(b) **Area:** The deadline at the lower end of Zone 4 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. Washougal and Sandy River sanctuaries are in effect.

(c) **Gear:** Gillnets with a 8-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.

(d) **Allowable Sales:** Salmon (except Chum) and shad.

(e) **Miscellaneous:** 24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

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

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

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. (19-235)

**WSR 19-21-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-253—Filed October 7, 2019, 4:37 p.m., effective October 12, 2019]

Effective Date of Rule: October 12, 2019.

Purpose: Amends recreational sturgeon fishing rules for the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000G [220-312-06000A] and 220-312-06000H [220-312-06000W]; and amending WAC 220-312-060.

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

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

Reasons for this Finding: This rule is needed to open white sturgeon retention in the Columbia River from Wauna powerlines upstream to Bonneville Dam and the Cowlitz River. The legal-size population is large enough to allow for a conservative retention fishery within the lower Columbia River. This action is consistent with decisions made by the states of Washington and Oregon on September 5 and October 7, 2019. 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: October 7, 2019.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

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

From Wauna powerlines upstream to Bonneville Dam, including the Cowlitz River:

(a) It is permissible to retain white sturgeon on the following dates: October 12, 2019. The daily limit of white sturgeon is one fish between 44-inches minimum and 50-inches maximum fork length.

(b) Catch and release angling is permissible on days not open to sturgeon retention.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River. (19-212)

The following section of the Washington Administrative Code is repealed effective October 13, 2019:

WAC 220-312-06000A Freshwater exceptions to statewide rules—Columbia River.

**WSR 19-21-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-254—Filed October 8, 2019, 4:28 p.m., effective October 9, 2019, 6:30 p.m.]

Effective Date of Rule: October 9, 2019, 6:30 p.m.

Purpose: Amends Puget Sound commercial crab rules.

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

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

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

Reasons for this Finding: This emergency rule will close Region 2-East. It will continue the Puget Sound commercial crab harvest in Region[s] 1, 2-West, 3-1, 3-2, and 3-3. Pot limits in Region[s] 1, 2-West, 3-1, 3-2, and 3-3 will remain at fifty pots per license. These provisions are in conformity with agreed management plans with applicable tribes. These man-

agement plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 8, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) Effective 6:30 p.m. October 9, 2019, Crab Management Region 2E is closed. Region 2E includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(2) Effective immediately, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 1, 2 West, Region 3-1, Region 3-2, or Region 3-3. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 26A West, 25B, 25D, 25A, 25E, 23D, 23C and 29.

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

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

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

REPEALER

The following section of the Washington Administrative code is repealed effective 6:30 p.m. on October 9, 2019:

WAC 220-340-4550W Commercial crab fishery—Seasons and areas—Puget Sound. (19-236)

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-340-4550W is probably intended to be WAC 220-340-45500W.

**WSR 19-21-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-255—Filed October 9, 2019, 4:07 p.m., effective October 9, 2019, 4:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial salmon fishing rules.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000P, 220-354-16000U and 220-354-18000M; and amending WAC 220-354-120, 220-354-160, and 220-354-180.

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

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

Reasons for this Finding: This emergency rule is needed to close scheduled openings for commercial purse seine and gillnet fisheries in Puget Sound Management and Catch Reporting Areas 7 and 7A. The chum salmon return to the Fraser River in Canada is estimated to be below the critical threshold of one million chum. Per Chapter 6 of the Pacific Salmon Treaty, the United States fleet cannot start fishing in Areas 7/7A on October 10. Reef net fishers in Puget Sound Management and Catch Reporting Area 7 will also be required to release all chum to align with these conservation measures. 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 3, Amended 0, Repealed 3.

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: October 9, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000P Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective immediately through November 9, 2019:

Areas	Open Periods
7 and 7A	Closed

NEW SECTION

WAC 220-354-16000U Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective immediately until through November 9, 2019:

Areas	Open Periods
7 and 7A	Closed

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

NEW SECTION

WAC 220-354-18000M Puget Sound salmon—Reef net—Open periods. Notwithstanding the provisions of WAC 220-354-180, effective immediately through November 11, 2019:

Reef nets - Open to reef nets according to the times, dates, and conditions as prescribed and listed below:

Areas	Open Periods
7	Open 5 a.m. - 9 p.m. daily, immediately through October 16

(a) Release all Chinook and chum.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

REPEALER

The following sections of the Washington Administrative Code are repealed effective November 9, 2019:

WAC 220-354-12000P Puget Sound salmon—Purse seine—Open periods.

WAC 220-354-16000U Puget Sound salmon—Gillnet—Open periods.

The following section of the Washington Administrative Code is repealed effective November 12, 2019:

WAC 220-354-18000M Puget Sound salmon—Reef net—
Open periods.

WSR 19-21-050

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed October 10, 2019, 12:27 p.m., effective October 10, 2019, 12:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-80 WAC, Vapor products and flavors, the Washington state board of health has adopted emergency rules to ban the sale of flavored vapor products, including flavored THC vapor products, to require retailers to display a sign warning of the risk of lung disease associated with use of vapor products, and to require reporting of cases of lung injury associated with the use of vapor products from health care providers and health care facilities.

Citation of Rules Affected by this Order: New WAC 246-80-001, 246-80-010, 246-80-020, 246-80-025, 246-80-030, and 246-80-040.

Statutory Authority for Adoption: RCW 43.20.050 (2)(f).

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 immediate adoption of a rule prohibiting the sale of flavored vapor products and requiring sellers of vapor products to post warning signs about the risk of vaping-related lung disease is necessary to prevent and reduce youth and young adult exposure, especially of youth and young adults, to severe lung disease associated with the use of vapor products. The Washington state board of health has the authority and responsibility to adopt rules for the prevention and control of such disease.

The Centers for Disease Control, United States Food and Drug Administration, Washington state department of health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including eighteen deaths. Seven cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remains unknown, and no single product or substance has been linked to all lung injury cases.

Notwithstanding state law prohibiting the sale or distribution of vapor products to minors, the 2018 Washington state healthy youth survey indicates that the prevalence of vapor product use within the past thirty days by eighth, tenth, and twelfth graders in Washington has increased by sixty-nine, sixty-seven, and forty-nine percent, respectively, since 2016, and these results may be an underestimate. Research consistently shows that flavors, and associated advertising, contribute to the appeal, initiation, and use of vapor products, particularly among adolescents and young adults. National data show that the use of flavored e-cigarettes among adolescents and young adults increased significantly from 2013-2018. Vapor products are not adequately regulated and there is not sufficient standardization, testing, or oversight of these products. Vapor products are not regulated or approved for smoking cessation.

The state board of health's health impact review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products. Requiring sellers of vapor products to post signs warning of the risk of vaping-associated lung disease will allow members of the public to make more informed decisions about the purchase and use of vapor products. Because the outbreak of lung disease is occurring now and growing, the immediate adoption of a rule prohibiting the sale of flavored vapor products and requiring the posting of warning signs is necessary for the preservation of the public health, safety, and general welfare by reducing youth exposure, especially of youth and young adults, to vaping-related severe lung disease.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 6, 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 6, Amended 0, Repealed 0.

Date Adopted: October 9, 2019.

Michelle A. Davis
Executive Director

Chapter 246-80 WAC

VAPOR PRODUCTS AND FLAVORS

NEW SECTION

WAC 246-80-001 Purpose and necessity. The immediate adoption of a rule prohibiting the sale of flavored vapor products and requiring sellers of vapor products to post warning signs about the risk of vaping-related lung disease is necessary to prevent and reduce exposure, especially of youth and young adults, to severe lung disease associated with the use of vapor products. The board has the authority and responsibility to adopt rules for the prevention and control of such disease.

The Centers for Disease Control, U.S. Food and Drug Administration, Washington state department of health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including eighteen deaths. Seven cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remains unknown, and no single product or substance has been linked to all lung injury cases.

Notwithstanding state law prohibiting the sale or distribution of vapor products to minors, the 2018 Washington state healthy youth survey indicates that the prevalence of vapor product use within the past thirty days by eighth, tenth, and twelfth graders in Washington has increased by sixty-nine, sixty-seven, and forty-nine percent, respectively, since 2016, and these results may be an underestimate. Research consistently shows that flavors, and associated advertising, contribute to the appeal, initiation, and use of vapor products, particularly among adolescents and young adults. National data show that the use of flavored e-cigarettes among adolescents and young adults increased significantly from 2013-2018. Vapor products are not adequately regulated and there is not sufficient standardization, testing, or oversight of these products. Vapor products are not regulated or approved for smoking cessation.

The state board of health's health impact review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products. Requiring sellers of vapor products to post signs warning of the risk of vaping-associated lung disease will allow members of the public to make more informed decisions about the purchase and use of vapor products. Because the outbreak of lung disease is occurring now and growing, the immediate adoption of a rule

prohibiting the sale of flavored vapor products and requiring the posting of warning signs is necessary for the preservation of the public health, safety, and general welfare by reducing exposure, especially of youth and young adults, to vaping-related severe lung disease.

NEW SECTION

WAC 246-80-010 Definitions. The definitions in this section apply throughout chapter 246-80 WAC unless the context clearly requires otherwise:

(1) "Business day" means any day that the department or a local health jurisdiction is open for business.

(2) "Case" means a person, alive or dead, diagnosed with a probable or confirmed case of a particular disease or condition by a health care provider or health care facility with diagnosis based on clinical or laboratory criteria or both.

(3) "Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco or marijuana or a taste or aroma derived from compounds or derivatives such as terpenes or terpenoids derived directly and solely from marijuana, as defined in RCW 69.50.101(y), or hemp plants that have been grown and tested as required by state law, imparted by a vapor product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A vapor product does not have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. It is the presence of a distinguishable taste or aroma, or both, that constitutes a characterizing flavor.

(4) "Department" means the Washington state department of health.

(5) "Flavored vapor product" means any vapor product that imparts a characterizing flavor.

(6) "Health care facility" means:

(a) Any assisted living facility licensed under chapter 18.20 RCW; birthing center licensed under chapter 18.46 RCW; nursing home licensed under chapter 18.51 RCW; hospital licensed under chapter 70.41 RCW; adult family home licensed under chapter 70.128 RCW; ambulatory surgical facility licensed under chapter 70.230 RCW; or private establishment licensed under chapter 71.12 RCW; and

(b) Clinics, or other settings where one or more health care providers practice.

(7) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Military personnel providing health care within the state regardless of licensure.

(8) "Marijuana product" has the same meaning provided in RCW 69.50.101.

(9) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the

state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(10) "Principal health care provider" means the attending health care provider recognized as primarily responsible for diagnosis or treatment of a patient, or in the absence of such, the health care provider initiating diagnostic testing or treatment for the patient.

(11) "Sell" means to transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a person engaged in the business of selling vapor products giving or offering vapor products free of charge.

(12) "Vapor product" means any noncombustible product that may contain nicotine or a marijuana product and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance including any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine or a marijuana product in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device including, but not limited to, marijuana-infused extracts or marijuana concentrates for inhalation.

NEW SECTION

WAC 246-80-020 Prohibition. No person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with the intent to sell or offer for sale flavored vapor products or any product that he or she knows or reasonably should know will be used with or in a vapor product to create a flavored vapor product. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale flavored vapor products at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

NEW SECTION

WAC 246-80-025 Warning signs. A person who holds a vapor product retailer's license or a vapor product delivery sale license issued under chapter 70.345 RCW must display a sign warning of the risk of lung disease associated with the use of vapor products, which the department shall design and make available on its website, so that it is clearly visible to anyone purchasing vapor products from the license holder.

NEW SECTION

WAC 246-80-030 Reporting. (1) Principal health care providers and health care facilities shall submit individual case reports of cases of lung injury associated with the use of vapor products to the local health jurisdiction within three business days. For the purposes of this subsection, local

health jurisdiction means where the patient resides, or, in the event the patient's residence cannot be determined, the local health jurisdiction in which the patient received treatment.

(2) Health care providers and health care facilities shall provide the following information in each case report:

- (a) Patient first and last name;
- (b) Patient physical address including zip code;
- (c) Patient date of birth;
- (d) Patient sex;
- (e) Patient best contact telephone number;
- (f) Name of the principal health care provider;
- (g) Telephone number of the principal health care provider;
- (h) Address where patient received care;
- (i) Name and telephone number of the person providing the report;
- (j) Case diagnosis;
- (k) Pertinent laboratory data, if available;
- (l) Pertinent lung imaging, if available; and
- (m) Patient history of vapor product use, including whether the vapor product used included nicotine, marijuana, or both.

(3) Health care facilities may assume the notification requirements established in this chapter for health care providers practicing within the health care facility.

(4) Health care providers and health care facilities shall comply with the requirements for the handling of case reports and medical information described in WAC 246-101-120.

(5) Local health jurisdictions shall notify the department within three business days using a secure electronic disease surveillance system for each case report received by the local health jurisdiction.

(6) Local health jurisdictions shall submit a case report to the department using a secure electronic disease surveillance system for each case report received by the local health jurisdiction:

- (a) Within seven days of completing a case investigation;
- or
- (b) Within twenty-one days of receiving the case report if the investigation is not complete.

NEW SECTION

WAC 246-80-040 Enforcement. (1) Violations of these rules may be subject to enforcement by any agency under authority of RCW 43.20.050(5). Enforcement actions may include, but are not limited to, requiring a person to stop selling flavored vapor products prohibited under WAC 246-80-020 through the use of one or more of the following:

- (a) A conference with the person to explore facts and resolve problems;
- (b) A compliance agreement with the person;
- (c) A notice of correction;
- (d) A notice of violation;
- (e) An order;
- (f) Other authorized proceedings.

(2) Enforcement orders issued under this section shall be in writing and shall include the violation and the corrective action required, and the name, business address, and phone

number of an appropriate staff person who may be contacted regarding the order.

(3) Enforcement orders shall be personally served in the manner of service of a summons in a civil action or in a manner showing proof of receipt.

WSR 19-21-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-256—Filed October 10, 2019, 2:36 p.m., effective October 10, 2019, 2:36 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 220-358-03000H; 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This rule is needed to close scheduled commercial fisheries in commercial Zone 4-5. Upriver bright Chinook impacts have accrued faster than expected in the commercial Zone 4-5 fishery requiring the remaining days planned to be rescinded to avoid exceeding the allowed harvest rate. 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 the compact action of July 30, August 12, August 28, September 25, October 7, and October 10, 2019. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2018-2027 *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: October 10, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000I Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C,

1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point/South Channel

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights October 10 - October 25

Open Hours: 6 PM - 10 AM

(b) **Area:** The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island.

(i) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(ii) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(c) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

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

(d) **Allowable Sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

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

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights October 10 - October 25

Open hours: 6 PM - 10 AM

(b) Area:

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

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

(c) Gear:

Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(d) **Allowable sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

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

(3) Deep River Select Area

(a) Dates:

Monday, Tuesday, Wednesday, and Thursday nights October 10-18

Monday, Tuesday, Wednesday, Thursday, and Friday nights Oct. 21-Nov. 16

Monday, Tuesday, Wednesday, and Thursday nights November 18-further notice.

Open hours: 6 PM - 9 AM September 25 to November 2, 5 PM - 8 AM thereafter

(b) **Area:** The Deep River fishing area includes 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.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4-inch through September 7, and a 6-inch maximum 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. It is unlawful to operate in any river, stream, or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level.

(d) **Allowable sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

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

(4) The white sturgeon possession and sales limit includes all open Select Area fisheries.

(5) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)) in Select Area Fisheries.

(4) Coho commercial tangle net fishery

(a) Dates:

Friday October 11

Monday October 14

Wednesday October 16

Open hours: 6 AM - 6 PM

(b) **Area:** Zones 1-3. Upper deadline 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) **Santuaries:** Elokomina-A, Cowlitz River, Kalama-A and Lewis-A

(d) **Gear:** Drift nets only. Maximum mesh size is 3-3/4 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms.

A red cork must be placed on the corkline every 25-fathoms as measured from the first mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(e) **Allowable sales:** Adipose fin-clipped coho salmon, pink salmon, and Chinook salmon. Sturgeon and chum salmon may not be possessed or sold.

(f) **Miscellaneous:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 30 minutes.

Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recov-

ery boxes must be released to the river prior to landing or docking.

Measuring mesh size: Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the outside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

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

Multiple net rule in effect: Which means nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

24-hour quick reporting required is for Washington wholesale dealers, per WAC 220-352-315.

Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(4) The white sturgeon possession and sales limit includes all open Select Area fisheries.

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

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

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 220-358-03000H Columbia River seasons below Bonneville. (19-252)

**WSR 19-21-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-257—Filed October 10, 2019, 3:16 p.m.]

Effective Date of Rule: October 14, 2019.

Purpose: Amend recreational fishing rules for the Skagit River.

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

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

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

Reasons for this Finding: This emergency rule is needed to close a portion of the Skagit River to all fishing to avoid gear conflicts with treaty fisheries during these scheduled dates. These closures were agreed to with comanagers during the 2019/2020 North of Falcon process. Exact dates were to be determined based on inseason information such as stream flow and run timing. These dates have now been set, 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: October 10, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000A Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040:

Skagit River: From the Highway 9 Bridge to the Baker River: Closed to all fishing the days of October 14 through October 15, 2019.

REPEALER

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

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

WSR 19-21-065

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed October 11, 2019, 1:51 p.m., effective October 11, 2019, 1:51 p.m.]

Effective Date of Rule: Immediately upon filing.

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

The rule making under WSR 18-14-080 has progressed to a public hearing under WSR 19-20-125. Rule making for single bed certification will be continued through a separate rule-making process [process] as the agency has additional work to do to develop the program. Single bed certification has also been renumbered from WAC 182-538D-0526 to WAC 182-100-0200 to reflect that it is not solely a service under medicaid.

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

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

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

Reasons for this Finding: 2ESHB 1388 directs the transfer of the behavioral health authority to the health care authority, effective July 1, 2018.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: October 11, 2019.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-100-0200 Single bed certification. At the discretion of the health care authority, an exception may be granted to allow timely and appropriate treatment in a facility

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

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

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

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

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

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

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

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

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

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, and licensed physicians are available for consultation and communication with both the person and the direct patient care staff;

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

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

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

(A) Observation and evaluation; and

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

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

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

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

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

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

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

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

(A) The hospital providing services;

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

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

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

facility must ensure the requirements in (c) of this subsection are met.

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

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

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

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

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

(8) The BHO or BHO MCO retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

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

WSR 19-21-066

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed October 11, 2019, 2:13 p.m., effective October 11, 2019, 2:13 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making implements 2ESHB 1388 which changed the designation of the state behavioral health authority from the department of social and health services to the health care authority, effective July 1, 2018. The health care authority is the single state medicaid agency responsible for state health care purchasing. These emergency rules are substantially the same as the rules in chapter 388-865 WAC and a few sections regarding the grievance processes in chapter 388-877 WAC that were repealed by the department of social and health services. WAC 182-538D-0526 for single bed certification has been removed from this emergency filing and filed under a separate rule-making project (WSR 19-21-063 and 19-21-065) while the agency continues to develop that program.

Citation of Rules Affected by this Order: New WAC 182-100-0100, 182-538D-0200, 182-538D-0232, 182-538D-0234, 182-538D-0236, 182-538D-0242, 182-538D-0246, 182-538D-0248, 182-538D-0252, 182-538D-0254, 182-538D-0256, 182-538D-0258, 182-538D-0262, 182-538D-0264, 182-538D-0266, 182-538D-0268, 182-538D-0272, 182-538D-0370, 182-538D-0375, 182-538D-0380, 182-538D-0385, 182-538D-0600, 182-538D-0620, 182-538D-

0630, 182-538D-0640, 182-538D-0654, 182-538D-0655, 182-538D-0660, 182-538D-0665, 182-538D-0670, 182-538D-0675, and 182-538D-0680.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 2ESHB 1388.

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: 2ESHB 1388 directs the transfer of the behavioral health authority to the health care authority, effective July 1, 2018. This emergency filing is necessary to continue the current emergency rules filed under WSR 19-13-057, which are set to expire on October 12, 2019, while the agency moves through the permanent rule-making process. Since the last emergency filing, the agency has scheduled a public hearing of [on] November 5, 2019, under WSR 19-20-125.

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 32, 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 32, Amended 0, Repealed 0.

Date Adopted: October 11, 2019.

Wendy Barcus
Rules Coordinator

Chapter 182-100 WAC

PROBLEM GAMBLING

NEW SECTION

WAC 182-100-0100 Problem and pathological gambling treatment services. (1) Under RCW 43.20A.890, the Washington state health care authority (HCA) administers a program for:

(a) The prevention and treatment of problem and pathological gambling; and

(b) The training of professionals in the identification and treatment of problem and pathological gambling, to be administered by a qualified person who has training and experience in problem gambling or the organization and

administration of treatment services for persons suffering from problem gambling.

(2) HCA tracks program participation and participant outcomes.

(3) To receive treatment under this program, a person must:

(a) Need treatment for problem or pathological gambling, or because of the problem or pathological gambling of a family member, but is unable to afford treatment; and

(b) Be identified by HCA as being most amenable to treatment.

(4) Treatment under this section is available only to the extent of the funds appropriated or otherwise made available to HCA for this purpose.

(5) Problem and pathological gambling treatment services include diagnostic screening and assessment, and individual, group, couples, and family counseling and case management.

(6) A person must have an assessment before receiving problem and pathological gambling services. The purpose of the assessment is to determine if a gambling disorder exists and if there are services available to address the person's needs. The assessment must follow the requirements in WAC 246-341-0610.

(7) An agency providing problem and pathological gambling services must meet the behavioral health agency licensure, certification, administration, personnel, clinical, and outpatient requirements in WAC 246-341-0754 and 246-341-0300 through 246-341-0650.

(8) Definitions for the purposes of this section only.

(a) **"Pathological gambling"** means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) **"Problem gambling"** means an earlier stage of pathological gambling which compromises, disrupts, or damages family or personal relationships, or vocational pursuits.

Chapter 182-538D WAC

BEHAVIORAL HEALTH SERVICES

NEW SECTION

WAC 182-538D-0200 Behavioral health services—
Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Adult" means a person age eighteen or older. For purposes of the medicaid program, adult means a person age twenty-one or older.

"Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the person, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"Behavioral health" means the prevention, treatment of, and recovery from substance use disorders, mental health disorders or problem and pathological gambling disorders.

"Behavioral health organization" or **"BHO"** means any county authority or group of county authorities or other

entity recognized by the director in contract in a defined region.

"Behavioral health organization (BHO) managed care organization (MCO)" is the entity that operates the prepaid inpatient health plan (PIHP) for medicaid behavioral health services.

"Chemical dependency professional" or **"CDP"** means a person credentialed by the department of health as a chemical dependency professional (CDP) with primary responsibility for implementing an individualized service plan for substance use disorder services.

"Child" means a person under the age of eighteen. For the purposes of the medicaid program, child means a person who is under the age of twenty-one.

"Clinical record" means a paper or electronic file that is maintained by the behavioral health organization and contains pertinent psychological, medical, and clinical information for each person served.

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week; prescreening determinations for people who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health organizations.

"Complaint" means the expression of a dissatisfaction with a service or program which may be investigated by the health care authority.

"Consent" means agreement given by a person after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

"Consultation" means the clinical review and development of recommendations regarding activities, or decisions of, clinical staff, contracted employees, volunteers, or students by people with appropriate knowledge and experience to make recommendations.

"County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

"Crisis" means an actual or perceived urgent or emergent situation that occurs when a person's stability or functioning is disrupted and there is an immediate need to resolve

the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

"Cultural competence" or **"culturally competent"** means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which people from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging people to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

"Designated crisis responder (DCR)" means a mental health professional appointed by a behavioral health organization (BHO) to perform the duties described in RCW 70.96A.140.

"Disability" means a physical or mental impairment that substantially limits one or more major life activities of a person and the person:

- (a) Has a record of such an impairment; or
- (b) Is regarded as having such impairment.

"Ethnic minority" or **"racial/ethnic groups"** means, for the purposes of this chapter, any of the following general population groups:

- (a) African American;
- (b) An American Indian or Alaskan native, which includes:
 - (i) A person who is a member or considered to be a member in a federally recognized tribe;
 - (ii) A person determined eligible to be found Indian by the secretary of interior;
 - (iii) An Eskimo, Aleut, or other Alaskan native; and
 - (iv) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off-reservation Indian/Alaskan native community organization.
- (c) Asian/Pacific Islander; or
- (d) Hispanic.

"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

"Housing services" means the active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs.

"Less restrictive alternative (LRA)" means court ordered outpatient treatment in a setting less restrictive than total confinement.

"Licensed" means the status given to behavioral health agencies by the department of health under its authority to license and certify mental health programs chapters 71.05, 71.34, and 71.24 RCW and its authority to certify substance use disorder treatment programs chapter 70.96A RCW.

"Mental health professional" means a person who meets the following:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of people with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department of health or attested to by the licensed behavioral health agency;

(d) A person who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(e) A person who had an approved waiver to perform the duties of a mental health professional (MHP) that was requested by a behavioral health organization (BHO) and granted by the department of social and health services mental health division prior to July 1, 2001.

"Mental health specialist" means:

(a) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(ii) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(b) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of people age sixty and older; and

(ii) The equivalent of one year of full-time experience in the treatment of people age sixty and older, under the supervision of a geriatric mental health specialist.

(c) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

(i) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(ii) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority individuals.

(d) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, "disabled" means a person with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(i) If the consumer is deaf, the specialist must be a mental health professional with:

(A) Knowledge about the deaf culture and psychosocial problems faced by people who are deaf; and

(B) Ability to communicate fluently in the preferred language system of the consumer.

(ii) The specialist for people with developmental disabilities must be a mental health professional who:

(A) Has at least one year experience working with people with developmental disabilities; or

(B) Is a developmental disabilities professional as defined in RCW 71.05.020.

"Peer counselor" means a person recognized by DBHR as a person who:

(a) Is a self-identified consumer of mental health services;

(b) Is a counselor credentialed under chapter 18.19 RCW;

(c) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the department of social and health services before October 1, 2004, and has met the requirements in (a), (b) and (d) of this subsection by January 31, 2005, the person is exempt from completing this specialized training;

(d) Has successfully passed an examination administered by DBHR or an authorized contractor; and

(e) Has received a written notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

"Quality assurance and quality improvement" means a focus on compliance to minimum requirements in rules and contracts, and activities to perform above minimum standards and achieve reasonably expected levels of performance, quality, and practice.

"Quality strategy" means an overarching system and/or process whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a behavioral health organization's (BHO's) operations.

"Recovery" means a process of change through which people improve their health and wellness, live a self-directed life, and strives to reach their full potential.

"Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for people who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Resource management services" means the planning, coordination, and authorization of residential services and community support services for people who are:

(a) Adults and children who are acutely mentally ill;

(b) Adults who are chronically mentally ill;

(c) Children who are severely emotionally disturbed; or

(d) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for delivery of behavioral health services.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that a person continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

"Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

"Youth" means a person who is age seventeen or younger.

BEHAVIORAL HEALTH ORGANIZATIONS

NEW SECTION

WAC 182-538D-0232 Behavioral health organizations—General. (1) A behavioral health organization (BHO) contracts with the division of behavioral health and recovery (DBHR) to administer behavioral health services within its service area.

(2) A BHO operates only in areas of the state that have not implemented the Washington apple health fully integrated managed care (FIMC) program. See chapter 182-538A WAC for rules that govern the FIMC program.

(3) BHOs, behavioral health agencies, and the BHO managed care organization (MCO) must:

(a) Comply with chapters 70.96A, 71.05, 71.24, 71.34, and 71.36 RCW, which contain laws regarding substance use disorders, mental illness, and community mental health services.

(b) Meet the requirements in this chapter and chapter 246-341 WAC regarding the licensure of behavioral health agencies and the certification of behavioral health services. An exemption of any section or subsection may be requested, subject to the criteria in WAC 182-538D-0236. DBHR does not exempt any requirement that is part of statute.

(4) A BHO is responsible to ensure behavioral health services are responsive in an age and culturally competent manner to the substance use disorder treatment and mental health needs of its community.

(5) DBHR administers behavioral health services regionally if the criteria in WAC 182-538D-0234 apply.

(6) The BHO MCO is the entity that operates the prepaid inpatient health plan (PIHP) medicaid behavioral health services.

(7) WAC 182-538D-0200 contains definitions for terms and phrases used in the BHO and the BHO MCO rules.

NEW SECTION

WAC 182-538D-0234 Behavioral health organizations—When the division of behavioral health and recovery administers regional behavioral health services. (1) If a currently operating behavioral health organization (BHO) chooses to stop functioning as a BHO, fails to meet state minimum standards specified in rule, or does not meet the requirements under RCW 71.24.045, the following is implemented:

(a) Under RCW 71.24.035(16), the director of the health care authority:

(i) Is designated as the BHO until a new BHO is designated; and

(ii) Assumes the duties assigned to the region without a participating BHO.

(b) The division of behavioral health and recovery (DBHR):

(i) Administers behavioral health services within the region without a participating BHO; and

(ii) Continues to apply the BHO requirements in WAC 182-538D-0232 through 182-538D-0272 and the BHO managed care organization requirements in WAC 182-538D-0370 through 182-538D-0385.

(2) A person who resides within the service area of a region without a participating BHO:

(a) May receive services, within available resources as defined in RCW 71.24.025(2), from any provider of behavioral health services that is contracted with DBHR and licensed by the department of health; and

(b) Who is a Title XIX medicaid client entitled to receive medically necessary behavioral health services without charge to the client.

(3) This section does not apply to a region in which the health care authority operates the Washington apple health fully integrated managed care (FIMC) program which provides fully integrated physical and behavioral health services to medicaid clients through a health care authority-contracted managed care organization. See chapter 182-538A WAC for information on Washington apple health FIMC.

NEW SECTION

WAC 182-538D-0236 Behavioral health organizations—How to request an exemption of a minimum standard. (1) A behavioral health organization (BHO), a licensed behavioral health agency, and the behavioral health organization (BHO) managed care organization (MCO) subject to the BHO and BHO MCO rules may request an exemption of a minimum standard in WAC 182-538D-0232 through 182-538D-0272 and 182-538D-0370 through 182-538D-0385 by submitting a request in writing to the director of the division of behavioral health and recovery (DBHR).

(2) The exemption request must include:

(a) The name and address of the entity that is making the request;

(b) The specific section or subsection of the rule for which an exemption is being requested;

(c) The reason why the exemption is necessary, or the method the entity will use to meet the desired outcome of the section or subsection in a more effective and efficient manner;

(d) A description of the plan and timetable to achieve compliance with the minimum standard or to implement, test, and report results of an improved way to meet the intent of the section or subsection;

(e) Documentation that the quality review team or behavioral health ombuds office was consulted and any resulting recommendations are included in the request; and

(f) A description of how people affected by the exemption will be notified.

(3) DBHR's review of the request considers whether approving the exemption will impact accountability, accessibility, efficiency, individual satisfaction, and quality of care, or will violate state or federal law. The requestor receives a determination notice from DBHR within thirty days from the date the exemption request was received.

(a) If DBHR grants the exemption request, the notice includes:

(i) The section or subsection of rule exempted;

(ii) The conditions of acceptance;

(iii) The time frame for which the exemption is approved; and

(iv) Notification that the exemption may be renewed upon request of the party that initially asked for the exemption. In this case, the requestor must submit a renewal request to the director of DBHR before the time frame of the initial exemption expires, and meet the applicable requirements of subsection (1) of this section.

(b) If DBHR denies the exemption request, the notice includes the reason for the denial.

(4) DBHR cannot exempt any minimum standard that is required by:

(a) Statute; or

(b) Another state agency.

NEW SECTION

WAC 182-538D-0242 Behavioral health organizations—Payment for behavioral health services. Within available resources as defined in RCW 71.24.025(4), a behavioral health organization (BHO) must ensure a person's eligibility for and payment for behavioral health services meet the following:

(1) A person who is eligible for medicaid is entitled to receive covered medically necessary behavioral health services without charge to the person, consistent with the state's medicaid state plan or federal waiver authorities. A medicaid recipient is also entitled to receive behavioral health services from a behavioral health organization (BHO) managed care organization (MCO) without charge.

(2) A person who is not eligible for medicaid is entitled to receive behavioral health services consistent with priorities

established by the health care authority. The person, the parent(s) of the person under age eighteen, the person's legal guardian, or the estate of the person:

- (a) Is responsible for payment for services provided; and
- (b) May apply to the following entities for payment assistance:
 - (i) The health care authority for medical assistance;
 - (ii) The behavioral health service provider for payment responsibility based on a sliding fee scale; or
 - (iii) The BHO MCO for authorization of payment for involuntary evaluation and treatment services.

NEW SECTION

WAC 182-538D-0246 Behavioral health organizations—Public awareness of behavioral health services. A behavioral health organization (BHO) or its designee must provide public information on the availability of mental health and substance use disorder services. The BHO must:

- (1) Maintain information on available services, including crisis services and the recovery help line in telephone directories, public websites, and other public places in easily accessible formats;
- (2) Publish and disseminate brochures and other materials or methods for describing services and hours of operation that are appropriate for all people, including those who may be visually impaired, limited-English proficient, or unable to read; and
- (3) Post and make information available to people regarding the behavioral health ombuds office consistent with WAC 182-538D-0262, and local advocacy organizations that may assist people in understanding their rights.

NEW SECTION

WAC 182-538D-0248 Behavioral health organizations—Governing body responsible for oversight. The behavioral health organization (BHO) must establish a governing body responsible for oversight of the BHO. The governing body must:

- (1) Be free from conflict of interest and all appearance of conflict of interest between personal, professional and fiduciary interests of a governing body member and the best interests of the BHO and the people it serves.
- (2) Have rules about:
 - (a) When a conflict of interest becomes evident;
 - (b) Not voting or joining a discussion when a conflict of interest is present; and
 - (c) When the governing body can assign the matter to others, such as staff members or advisory bodies.

NEW SECTION

WAC 182-538D-0252 Behavioral health organizations—Advisory board membership. (1) A behavioral health organization (BHO) must appoint advisory board members and maintain an advisory board in order to:

- (a) Promote active engagement with people with behavioral health disorders, their families, and behavioral health agencies; and

- (b) Solicit and use the advisory board members input to improve service delivery and outcome.

(2) The BHO must appoint advisory board members and maintain an advisory board that:

- (a) Broadly represents the demographic character of the service area;
 - (b) Is composed of at least fifty-one percent representation of one or more of the following:
 - (i) People with lived experience;
 - (ii) Parents or legal guardians of people with lived experience; or
 - (iii) Self-identified as people in recovery from a behavioral health disorder.
 - (c) Includes law enforcement representation; and
 - (d) Includes tribal representation, upon request of a tribe.
- (3) When the BHO is not a function of county government, the advisory board must include no more than four county elected officials.

(4) The advisory board:

- (a) May have members who are employees of subcontracted agencies, as long as there are written rules that address potential conflicts of interest.
- (b) Has the discretion to set rules in order to meet the requirements of this section.
- (c) Membership is limited to three years per term for time served, per each advisory board member. Multiple terms may be served by a member if the advisory board rules allow it.

(5) The advisory board independently reviews and provides comments to either the BHO, the BHO governing board, or both, on plans, budgets, and policies developed by the BHO to implement the requirements of this section, chapters 71.05, 71.24, 71.34 RCW, and applicable federal laws.

NEW SECTION

WAC 182-538D-0254 Behavioral health organizations—Voluntary inpatient services and involuntary evaluation and treatment services. A behavioral health organization (BHO) must develop and implement age and culturally competent behavioral health services that are consistent with chapters 70.96A, 71.24, 71.05, and 71.34 RCW.

(1) For voluntary inpatient services, the BHO must develop and implement formal agreements with inpatient services funded by the BHO regarding:

- (a) Referrals;
- (b) Admissions; and
- (c) Discharges.

(2) For involuntary evaluation and treatment services, the BHO:

- (a) Must ensure that people in their regional service area have access to involuntary inpatient care; and
- (b) Is responsible for coordinating discharge planning with the treating inpatient facility.

(3) The BHO must:

- (a) Ensure periodic reviews of the evaluation and treatment service facilities consistent with BHO procedures and notify the appropriate authorities if it believes that a facility is not in compliance with applicable rules and laws.

(b) Authorize admissions into inpatient evaluation and treatment services for people from:

- (i) State psychiatric hospitals:
 - (A) Western state hospital;
 - (B) Eastern state hospital; and
 - (C) The child study and treatment center.
- (ii) Community hospitals.

(iii) Certified inpatient evaluation and treatment facilities licensed by the department of health as adult residential treatment facilities.

(iv) The children's long-term inpatient program (CLIP).

(c) Receive prior approval from the division of behavioral health and recovery (DBHR) in the form of a single bed certification for services to be provided to people on a ninety- or one hundred eighty-day community inpatient involuntary commitment order consistent with the exception criteria in WAC 246-341-1136.

NEW SECTION

WAC 182-538D-0256 Behavioral health organizations—Community support, residential, housing, and employment services. (1) **Community support services** as defined in WAC 182-538D-0200. A behavioral health organization (BHO) must:

(a) Develop and coordinate age and culturally appropriate community support services that are consistent with chapters 71.05, 71.24, and 71.34 RCW to ensure that the mental health and substance use disorder services listed in chapter 246-341 WAC can be accessed by all eligible people in the BHO's service area and are provided to eligible people directly, or by contract.

(b) Ensure prescreening determinations are conducted for providing community support services for people with mental illness who are being considered for placement in nursing facilities as required by RCW 71.24.025(8).

(2) **Residential services** as defined in WAC 182-538D-0200. A BHO must:

(a) Ensure active search and promotion of access to, and choice in, safe and affordable independent housing that is appropriate to the person's age, culture, and residential needs. This includes:

(i) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing; and

(ii) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan, including a full range of residential services as defined in RCW 71.24.025(23).

(b) Ensure that people in licensed residential facilities receive behavioral health services consistent with their individual service plan and are advised of their rights, including long-term care rights under chapter 70.129 RCW.

(3) **Housing services** as defined in WAC 182-538D-0200. A BHO must ensure active search and promotion of access to, and choice in, safe and affordable housing that is

appropriate to the person's age, culture, and needs. This includes:

(a) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing;

(b) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan; and

(c) Coordinating with public housing entities, homeless continuums of care, and affordable housing developers.

(4) **Employment services.** A BHO must coordinate with the health care authority or other local entities that support employment services to assure that people wanting to work are provided with recovery support-employment services under WAC 246-341-0720.

NEW SECTION

WAC 182-538D-0258 Behavioral health organizations—Administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act. A behavioral health organization (BHO) must establish policies and procedures for administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act, including investigation, detention, transportation, court-related, and other services required by chapters 70.96A, 71.05 and 71.34 RCW. This includes:

(1) Ensuring that designated crisis responders (DCRs) perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 70.96A, 71.05 and 71.34 RCW.

(2) Documenting the person's compliance with the conditions of mental health less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed person for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety-day commitments and one hundred eighty-day commitments.

(b) Notifying the DCR if noncompliance with the less restrictive alternative order impairs the person sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

NEW SECTION

WAC 182-538D-0262 Behavioral health organizations—Behavioral health ombuds office. A behavioral health organization (BHO) must provide unencumbered access to and maintain the independence of the behavioral health ombuds service as set forth in the contract between the BHO and the division of behavioral health and recovery (DBHR). The BHO and DBHR must ensure the inclusion of representatives of client advocate organizations when revis-

ing the terms of the contract regarding the requirements of this section. Behavioral health ombuds members must be current consumers of the mental health or substance use disorder system, or past consumers or family members of past consumers. The BHO must maintain a behavioral health ombuds office that:

- (1) Is responsive to the age and demographic character of the region and assists and advocates for people with resolving issues, grievances, and appeals at the lowest possible level;
- (2) Is independent of BHO service providers;
- (3) Supports people, family members, and other interested parties regarding issues, grievances, and appeals;
- (4) Is accessible to people, including having a toll-free, independent phone line for access;
- (5) Is able to access service sites and records relating to people with appropriate releases so that it can reach out to people and help to resolve issues, grievances, and appeals;
- (6) Receives training and adheres to confidentiality consistent with this chapter and chapters 70.96A, 71.05, 71.24, and 70.02 RCW;
- (7) Continues to be available to advocate and support people through the grievance, appeal and administrative hearing processes;
- (8) Involves other people, at the person's request;
- (9) Supports people in the pursuit of a formal resolution;
- (10) If necessary, continues to assist the person through the administrative hearing process;
- (11) Coordinates and collaborates with allied services to improve the effectiveness of advocacy and to reduce duplication when serving the same person;
- (12) Provides information on grievances to DBHR and BHO quality strategy; and
- (13) Provides reports and formalized recommendations at least biennially to DBHR and BHO advisory and governing boards, local consumer and family advocacy groups, the BHO quality review team, and the BHO provider network.

NEW SECTION

WAC 182-538D-0264 Behavioral health organizations—Quality strategy. A behavioral health organization (BHO) must implement a quality strategy for continuous quality improvement in the delivery of culturally competent mental health services. The BHO must submit a quality assurance and improvement plan to the division of behavioral health and recovery (DBHR). All changes to the quality assurance and improvement plan must be submitted to DBHR for approval prior to implementation. The plan must include all of the following:

- (1) Roles, structures, functions and interrelationships of all the elements of the quality strategy including, but not limited to, the BHO governing board, clinical and management staff, advisory board, behavioral health ombuds service, and quality review teams.
- (2) Procedures to ensure that quality assurance and improvement activities are effectively and efficiently carried out with clear management and clinical accountability, including methods to:

- (a) Collect, analyze and display information regarding:
 - (i) The capacity to manage resources and services, including financial and cost information and compliance with statutes, regulations and contracts;
 - (ii) System performance indicators;
 - (iii) Quality and intensity of services;
 - (iv) Incorporation of feedback from people, allied service systems, community providers, the behavioral health ombuds office and quality review team;
 - (v) Clinical care and service usage including participant outcome measures; and
 - (vi) Recommendations and strategies for system and clinical care improvements, including information from exit interviews of people and providers;
- (b) Monitor management information system data integrity;
- (c) Monitor complaints, grievances and adverse incidents for people;
- (d) Monitor contractors and to notify DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements;
- (e) Immediately investigate and report allegations of fraud and abuse of the contractor or subcontractor to DBHR;
- (f) Monitor delegated administrative activities;
- (g) Identify necessary improvements;
- (h) Interpret and communicate practice guidelines to providers;
- (i) Implement change;
- (j) Evaluate and report results;
- (k) Demonstrate incorporation of all corrective actions to improve the system;
- (l) Consider system improvements based on recommendations from all on-site monitoring, evaluation, accreditation, and certification reviews; and
- (m) Review, update, and make the plan available to community stakeholders.
- (3) Targeted improvement activities, including:
 - (a) Performance measures that are objective, measurable, and based on either current knowledge or best practice, or both, including at least those defined by DBHR in the contract with the BHO;
 - (b) An analysis of consumer care covering a representative sample of at least ten percent of consumers or five hundred consumers, whichever is smaller;
 - (c) Efficient use of human resources; and
 - (d) Efficient business practices.

NEW SECTION

WAC 182-538D-0266 Behavioral health organizations—Quality review teams. A behavioral health organization (BHO) must establish and maintain unencumbered access to and maintain the independence of a quality review team as described in this section and in the contract between the BHO and the division of behavioral health and recovery (DBHR). The quality review team must include people who currently receive or have in the past received behavioral health services, and may also include the family members of such people. The BHO must assure that quality review teams:

(1) Fairly and independently review the performance of the BHO and service providers in order to evaluate systemic issues as measured by objective indicators of participant outcomes in rehabilitation and recovery, including all of the following:

- (a) Quality of care;
- (b) The degree to which services are focused on the person and are age and culturally appropriate;
- (c) The availability of alternatives to hospitalization, cross-system coordination and range of treatment options; and
- (d) The effectiveness of the BHO's coordination with allied systems including, but not limited to, schools, state and local hospitals, jails and shelters.

(2) Have the authority to enter and monitor any behavioral health agency contracted with a BHO.

(3) Meet with interested people and family members, allied service providers, including state or community psychiatric hospitals, BHO contracted service providers, and people that represent the age and ethnic diversity of the BHO's service area to:

(a) Determine if services are accessible and address the needs of people based on sampled people's perception of services using a standard interview protocol. The protocol will query the sampled people regarding ease of accessing services, the degree to which services address medically necessary needs, and the benefit of the service received; and

(b) Work with interested people and other people, if requested by the person, service providers, the BHO, and DBHR to resolve identified problems.

(4) Provide reports and formalized recommendations at least biennially to DBHR, the behavioral health advisory committee and the BHO advisory and governing boards and ensure that input from the quality review team is integrated into the overall BHO quality strategy, behavioral health ombuds office services, local consumer and family advocacy groups, and provider network.

(5) Receive training in and adhere to applicable confidentiality standards.

NEW SECTION

WAC 182-538D-0268 Behavioral health organizations—Standards for contractors and subcontractors. A behavioral health organization (BHO) must not contract or subcontract for clinical services to be provided using public funds unless the contractor or subcontractor is licensed by the department of health for those services, or is individually licensed by the department of health as defined in chapter 18.57, 18.71, 18.83, or 18.79 RCW. The BHO must:

(1) Require and maintain documentation that contractors and subcontractors are licensed, certified, or registered in accordance with state and federal laws;

(2) Follow applicable requirements of the BHO contract with the division of behavioral health and recovery (DBHR);

(3) Demonstrate that it monitors contractors and subcontractors and notifies DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements; and

(4) Terminate its contract or subcontract with a provider if DBHR notifies the BHO of a provider's failure to attain or maintain licensure.

NEW SECTION

WAC 182-538D-0272 Behavioral health organizations—Operating as a behavioral health agency. A behavioral health organization (BHO) may operate as a behavioral health agency when the BHO:

(1) Meets the criteria in RCW 71.24.045(2) and chapters 70.96A and 71.24 RCW; and

(2) Maintains a current license as a behavioral health agency from the department of health.

MENTAL HEALTH PREPAID HEALTH PLANS

NEW SECTION

WAC 182-538D-0370 Behavioral health organization managed care organization—Minimum standards. To be eligible to contract with the division of behavioral health and recovery (DBHR), the behavioral health organization (BHO) managed care organization (MCO) must comply with all applicable local, state, and federal rules and laws. The BHO MCO must:

(1) Provide documentation of a population base of sixty thousand medicaid eligible people covered within the service area or receive approval from DBHR based on submittal of an actuarially sound risk management profile;

(2) If the BHO is not a county-based organization, the BHO must maintain licensure by the Washington state office of the insurance commissioner as a health care service contractor under chapter 48.44 RCW;

(3) Provide medically necessary behavioral health services that are age and culturally appropriate for all medicaid clients in the service area within a capitated rate;

(4) Demonstrate working partnerships with tribal authorities for the delivery of services that blend with tribal values, beliefs and culture;

(5) Develop and maintain written subcontracts that clearly recognize that legal responsibility for administration of the service delivery system remains with the BHO MCO, as identified in the contract with DBHR;

(6) Retain responsibility to ensure that applicable standards of this chapter, other state rules, and federal laws are met even when it delegates duties to subcontractors; and

(7) Ensure the protection of individual and family rights as described in chapters 70.96A, 71.05 and 71.34 RCW.

NEW SECTION

WAC 182-538D-0375 Behavioral health organization managed care plan—Utilization management. Utilization management is the way the behavioral health organization (BHO) managed care organization (MCO) authorizes or denies substance use disorder treatment or mental health services, monitors services, and follows the level of care guidelines. To demonstrate the impact on access to care of adequate quality, a BHO must provide utilization management of the behavioral health rehabilitation services under 42

C.F.R. Sec. 440.130(d) that is independent of service providers. This process must:

- (1) Provide effective and efficient management of resources;
- (2) Assure capacity sufficient to deliver appropriate quality and intensity of services to people without a wait list consistent with the contract with the division of behavioral health and recovery (DBHR);
- (3) Plan, coordinate, and authorize community support services;
- (4) Ensure that services are provided according to the individual service plan;
- (5) Ensure assessment and monitoring processes are in place by which service delivery capacity responds to changing needs of the community and the person;
- (6) Develop, implement, and enforce written level of care guidelines for admissions, placements, transfers and discharges into and out of services including:
 - (a) A clear process for the BHO MCO's role in the decision-making process about admission and continuing stay at various levels is available in language that is clearly understood by all parties involved in a person's care, including laypersons;
 - (b) Criteria for admission into various levels of care, including community support, inpatient and residential services that are clear and concrete;
 - (c) Methods to ensure that services are individualized to meet the needs of all people served, including methods that address different ages, cultures, languages, civil commitment status, physical abilities, and unique service needs; and
 - (d) Assurance that the BHO MCO retains a sufficiently strong and regular oversight role to assure decisions are being made appropriately, to the extent authorization of care at any level of care or at continuing stay determinations is delegated.
- (7) Collect data that measures the effectiveness of the criteria in ensuring that all eligible people get services that are appropriate to their needs; and
- (8) Report to DBHR any knowledge it gains that the BHO MCO or behavioral health service provider is not in compliance with a state or federal rule or law.

NEW SECTION

WAC 182-538D-0380 Behavioral health organization managed care organization—Choice of primary provider. (1) The behavioral health organization (BHO) managed care organization (MCO) must:

- (a) Ensure that each person receiving nonemergency behavioral health rehabilitation services has a primary provider who is responsible to carry out the individual service plan; and
- (b) Allow people, parents of people age twelve and younger, and guardians of people of all ages to select a primary provider from the available primary provider staff within the BHO MCO.
- (2) For a person with an assigned case manager, the case manager is the primary provider.
- (3) If the person does not select a primary provider, the BHO MCO or its designee must assign a primary provider

not later than fifteen working days after the person requests services.

- (4) The BHO MCO or its designee must allow a person to change primary providers at any time for any reason. The person must notify the BHO MCO or its designee of the request for a change, and inform the MCO of the name of the new primary provider.

NEW SECTION

WAC 182-538D-0385 Behavioral health organization managed care organization—Behavioral health screening for children. The behavioral health organization (BHO) managed care organization (MCO) is responsible for conducting behavioral health screening and treatment for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program. This includes:

- (1) Providing resource management services for children eligible under the EPSDT program as specified in contract with the division of behavioral health and recovery; and
- (2) Developing and maintaining an oversight committee for the coordination of the EPSDT program that must include representation from parents of medicaid-eligible children.

INPATIENT AND EVALUATION TREATMENT FACILITIES

DEPARTMENT OF CORRECTIONS ACCESS TO CONFIDENTIAL MENTAL HEALTH INFORMATION

NEW SECTION

WAC 182-538D-0600 Purpose. In order to enhance and facilitate the department of corrections' ability to carry out its responsibility of planning and ensuring community protection, mental health records and information, as defined in this section, that are otherwise confidential shall be released by any mental health service provider to the department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office as authorized in RCW 71.05.445. Department of corrections personnel must use records only for the stated purpose and must assure that records remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

NEW SECTION

WAC 182-538D-0620 Scope. Many records and reports are updated on a regular or as needed basis. The scope of the records and reports to be released to the department of corrections are dependent upon the reason for the request.

- (1) For the purpose of a presentence investigation release only the most recently completed or received records of those completed or received within the twenty-four-month period before the date of the request; or
- (2) For all other purposes including risk assessments release all versions of records and reports that were com-

pleted or received within the ten year period prior to the date of the request that are still available.

NEW SECTION

WAC 182-538D-0630 Time frame. The mental health service provider will provide the requested relevant records, reports and information to the authorized department of corrections person in a timely manner, according to the purpose of the request:

(1) Presentence investigation - Within seven days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the seven-day-period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(2) All other purposes - Within thirty days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the thirty-day period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(3) Emergent situation requests - When an offender subject has failed to report for department of corrections supervision or in an emergent situation that poses a significant risk to the public, the mental health provider shall upon request, release information related to mental health services delivered to the offender and, if known, information regarding the whereabouts of the offender. Requests if oral must be subsequently confirmed in writing the next working day, which includes email or facsimile so long as the requesting person at the department of corrections is clearly defined. The request must specify the information being requested. Disclosure of the information requested does not require the consent of consumer.

Information that can be released is limited to:

(a) A statement as to whether the offender is or is not being treated by the mental health services provider; and

(b) Address or information about the location or whereabouts of the offender.

NEW SECTION

WAC 182-538D-0640 Written requests. The written request for relevant records, reports and information must include:

(1) Verification that the person for whom records, reports and information are being requested is under the authority of the department of corrections, per chapter 9.94A RCW, and the expiration date of that authority;

(2) Sufficient information to identify the person for whom records, reports and information are being requested including name and other identifying data;

(3) Specification as to which records and reports are being requested and the purpose for the request;

(4) Specification as to what relevant information is requested and the purpose for the request;

(5) Identification of the department of corrections person to whom the records, reports and information shall be sent, including the person's name, title and address;

(6) Name, title and signature of the requestor and date of the request.

BEHAVIORAL HEALTH SERVICES- ADMINISTRATIVE REQUIREMENTS

NEW SECTION

WAC 182-538D-0654 How people may express concern about their rights, services, or treatment. (1) People who apply for, are eligible for, or receive behavioral health services authorized by a behavioral health organization (BHO), may access the BHO's grievance and appeal system to express concern about their rights, services, or treatment.

(2) The BHO's grievance and appeal system includes:

(a) A grievance process as described in WAC 182-538D-0660;

(b) An appeal process as described in WAC 182-538D-0670; and

(c) Access to administrative hearings as described in WAC 182-538D-0675.

(3) People must exhaust the appeal process before they have access to an administrative hearing.

(4) People may also use the free and confidential ombuds services under WAC 182-538D-0262 through the BHO that contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and behavioral health agencies and are offered to people at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

(5) In handling grievances and appeals, each BHO and behavioral health agency must give people any reasonable assistance in completing forms and taking other procedural steps related to grievance or appeal. This includes, but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

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

NEW SECTION

WAC 182-538D-0655 Grievance and appeal system and administrative hearings—Definitions. The terms and definitions in this section apply to the behavioral health organization (BHO) grievance and appeal system and administrative hearing rules. Other definitions that apply to behavioral health services may be found at WAC 182-538D-0200.

(1) "Administrative hearing" means a proceeding before an administrative law judge to review an adverse benefit determination or a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) "Adverse benefit determination" means, in the case of medicaid services administered by the BHO, any one or more of the following:

(a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state;

(e) The failure of a BHO to act within the grievance and appeal system time frames as provided in WAC 182-538D-0660 through 182-538D-0670 regarding the standard resolution of grievances and appeals;

(f) For a resident of a rural area with only one BHO, the denial of a person's request to exercise the right to obtain services outside the network; or

(g) The denial of a person's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

(3) "Appeal" means a review by a behavioral health organization (BHO) of an adverse benefit determination, as defined in this section.

(4) "Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, a person's right to dispute an extension of time proposed by the BHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a behavioral health provider or employee, and failure to respect the person's rights regardless of whether a specific action is requested by the person.

(5) "Grievance and appeal system" means the processes a BHO implements to handle appeals of adverse benefit determinations and grievances as well as the processes to collect and track information about them. The BHO must establish the grievance and appeal system and meet the requirements of 42 C.F.R. Sec. 438, Subpart F (2017).

(6) "Person" means a person who applies for, is eligible for, or receives BHO-authorized behavioral health services from an agency licensed by the department of health as a behavioral health agency. For the purposes of accessing the grievance and appeal system and the administrative hearing process, when another person is acting on a person's behalf, the definition of a person also includes any of the following:

(a) In the case of a minor, the person's parent or, if applicable, the person's custodial parent;

(b) The person's legal guardian;

(c) The person's representative if the person gives written consent;

(d) The person's behavioral health provider if the person gives written consent, except that the behavioral health provider cannot request continuation of benefits on the person's behalf.

(7) "Notice of adverse benefit determination" is a written notice a BHO provides to a person to communicate an adverse benefit determination.

(8) "Notice of determination" means a written notice that must be provided to a person to communicate denial or limited authorization of a nonmedicaid service offered by the BHO. A notice of determination must contain the following:

(a) The reason for denial or offering of alternative services;

(b) A description of alternative services, if available; and

(c) The right to request an administrative hearing, how to request a hearing, and the time frames for requesting a hearing as identified in WAC 182-538D-0675.

NEW SECTION

WAC 182-538D-0660 Filing a grievance. (1) A person or person's representative may file a grievance to express dissatisfaction in person, orally, or in writing about any matter other than an adverse benefit determination, as defined in WAC 182-538D-0655, to:

(a) The behavioral health agency providing the behavioral health services; or

(b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If a person receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the person's grievances.

(3) There is no time limit to file a grievance.

(4) The ombuds may assist the person in resolving the grievance at the lowest possible level.

(5) **Filing a grievance with a behavioral health agency.** If a person first files a grievance with the behavioral health agency and the person is not satisfied with the agency's written decision on the grievance, or if the person does not receive a copy of that decision from the agency within the time required under subsection (7) of this section, the person may then choose to file the grievance with the BHO. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(6) **Filing a grievance with a BHO.** If the person first files a grievance with the BHO and not the agency, and the person is not satisfied with the BHO's written decision on the grievance, the person cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(7) When a person files a grievance, the behavioral health agency or BHO that receives the grievance must:

(a) Acknowledge the receipt of the grievance in writing within five business days;

(b) Investigate the grievance;

(c) At the person's request, give the person reasonable assistance in taking any procedural steps;

(d) Inform the person about ombuds services and how to access these services;

(e) Apply the rules in subsection (8) of this section; and

(f) Send the person who filed the grievance a written notice describing the decision no longer than ninety days from the date the behavioral health agency or BHO receives the grievance.

(8) The behavioral health agency or BHO that receives the grievance must ensure all of the following:

(a) Other people are allowed to participate in the grievance process, if the person chooses;

(b) That a grievance is resolved even if the person is no longer receiving behavioral health services;

(c) That the people who make decisions on a grievance:

(i) Were neither involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of the grievance;

(ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding a grievance concerning denial of an expedited resolution of an appeal or a grievance that involves any clinical issues; and

(iii) Consider all comments, documents, records, and other information submitted by the person or the person's representative.

(d) That the person and, if applicable, the person's representative, receives a written notice containing the decision no later than ninety days from the date the agency or BHO receives a grievance. This time frame can be extended up to an additional fourteen days:

(i) If requested by the person or the person's representative; or

(ii) By the agency or BHO when additional information is needed and the agency or BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and the added time is in the person's interest. The BHO must:

(A) Make reasonable efforts to give the person prompt oral notice of the delay; and

(B) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(e) That the written notice includes the resolution of the grievance, the reason for the decision, and the date the decision was made and is in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Is written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDD telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDD telephone services, and alternative formats to include large print and Braille.

(f) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are:

(i) Kept for a period of no less than ten years after the completion of the grievance process;

(ii) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

(iii) Kept in confidential files separate from the person's clinical record;

(iv) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the grievance; and

(g) Are accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the grievance;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the grievance, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the grievance was filed.

(9) When the BHO does not act within the grievance process time frames described in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

NEW SECTION

WAC 182-538D-0665 Notice of adverse benefit determination. (1) A behavioral health organization's (BHO's) notice of adverse benefit determination provided to a person must be in writing and in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(a) Be written in the person's non-English language, if applicable;

(b) Contains the BHO's toll-free and TTY/TDD telephone number; and

(c) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language, TTY/TDD telephone services, and alternative formats to include large print and Braille.

(2) The notice of adverse benefit determination must, at a minimum, explain the following:

(a) The adverse benefit determination the BHO has made or intends to make;

(b) The reasons for the adverse benefit determination, including citation of the rule(s) and criteria used for the basis of the decision;

(c) The right of the person to be provided reasonable access to and copies of all documents, records, and other information relevant to the person's adverse benefit determination upon request and free of charge;

(d) The person's right to file an appeal of the adverse benefit determination with the BHO, including information on exhausting the BHO's one level of appeal and the person's right to request an administrative hearing;

(e) The circumstances under which an expedited appeal process is available and how to request it; and

(f) The person's right to receive behavioral health services while an appeal is pending, how to make the request, and that the person may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision in the notice of adverse benefit determination.

(3) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required time frame, or fails to provide services in a timely manner, it is considered an adverse benefit determination. In these cases, the BHO sends a formal notice of adverse benefit determination, which includes the person's right to request an administrative hearing. When the BHO does not act within the grievance and appeal system time frames as identified within this chapter, it is considered exhaustion of the appeals process and the person has a right to request an administrative hearing.

NEW SECTION

WAC 182-538D-0670 Filing an appeal. (1) A person may file an appeal to ask the behavioral health organization (BHO) to review an adverse benefit determination that the BHO has communicated on a written notice of adverse benefit determination as defined in WAC 182-538D-0655. A person's representative may appeal an adverse benefit determination with the person's written consent. If a written notice of adverse benefit determination was not received, an appeal may still be filed.

(2) The person requesting review of an adverse benefit determination must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) Appeals may be:

(a) Standard as described in subsections (6) and (7) of this section; or

(b) Expedited if the criteria in subsection (8) of this section are met.

(4) The appeal process must:

(a) Provide a person a reasonable opportunity to present evidence and make legal and factual arguments in person as well as in writing. The BHO must inform the person of the limited time available.

(b) Provide the person opportunity, free of charge and sufficiently in advance to examine the person's clinical record, including examining new or additional evidence, medical records, and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

(i) The person, the person's representative, or both; or

(ii) The legal representative of a deceased person's estate.

(5) The BHO must ensure that the people who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of appeal;

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding an appeal of an adverse benefit determination concerning medical necessity or an appeal that involves any clinical issues; and

(c) Consider all comments, documents, records, and other information submitted by the person regardless of whether the information was considered in the initial review.

(6) Standard appeals for adverse benefit determination - Continued services not requested. A person who disagrees with a decision communicated on a notice of adverse benefit determination may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must file the appeal within sixty days from the date on the notice of adverse benefit determination.

(b) The BHO must confirm receipt of the appeal in writing within five business days.

(c) The BHO must send the person a written notice of the resolution as expeditiously as the person's health condition requires, and no longer than thirty days from the day the BHO received the appeal. This time frame may be extended up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. The BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay; and

(ii) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(d) The written notice of the resolution must include all the information listed in subsection (9) of this section.

(7) Standard appeals for termination, suspension, or reduction of previously authorized services - Continued services requested. A person who receives a notice of adverse benefit determination from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must:

(i) File the appeal with the BHO on or before the later of the following:

(A) Within ten days of the date on the notice of adverse benefit determination; or

(B) The intended effective date of the BHO's proposed adverse benefit determination; and

(ii) Request continuation of services.

(b) The BHO must:

(i) Confirm receipt of the appeal and the request for continued services with the person orally or in writing within five business days;

(ii) Send a notice in writing that follows up on any oral confirmation made; and

(iii) Include in the notice that if the appeal decision is not in favor of the person, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

(c) The BHO's written notice of the resolution must contain all of the information listed in subsection (9) of this section.

(8) **Expedited appeal process.** If a person or the person's behavioral health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal may be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the time frame for standard resolutions under subsection (6) or (7) of this section, and make reasonable efforts to give the person prompt oral notice of the denial and follow up within two days with a written notice.

(a) Both of the following apply to expedited appeal requests:

(i) The adverse benefit determination must be for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services;

(ii) The expedited appeal must be filed with the BHO, either orally or in writing and within:

(A) Ten days of the BHO's mailing the written notice of adverse benefit determination or the intended effective date of the BHO's proposed adverse benefit determination, if the person is requesting continued benefits; or

(B) Sixty days from the date on the BHO's written notice of adverse benefit determination if the person is not requesting continued benefits.

(b) The BHO must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the person a written notice of the resolution no longer than seventy-two hours after receiving the request for an expedited appeal.

(c) The BHO may extend the time frames up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. In this case the BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay;

(ii) Within two days give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision; and

(iii) Resolve the appeal as expeditiously as the person's health condition requires and no later than the date the extension expires.

(d) The BHO must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution or who supports a person's appeal.

(9) The BHO's written notice of the resolution containing the decision on a standard appeal or expedited appeal must:

(a) Clearly state the BHO's decision on the appeal, the reason for the decision, and the date the decision was made;

(b) Inform the person of the right to an administrative hearing if the person disagrees with the decision, how to request a hearing, and the following time frames for requesting a hearing:

(i) Within ten days from the date on the notice of the resolution if the person is asking that services be continued pending the outcome of the hearing or if the person is asking for an expedited hearing;

(ii) Within one hundred twenty days from the date on the notice of the resolution if the person is not asking for continued services.

(c) Be in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Be written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDD telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDD telephone services, and alternative formats to include large print and Braille.

(10) When the BHO does not act within the appeal process time frames explained in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(11) **Duration of continued services during the appeal process.** When a person has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO must ensure the services are continued until one of the following occurs:

(a) The person withdraws the appeal; or

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the person and the person does not request an administrative hearing within ten days from the date the BHO mails the notice; see WAC 182-538D-0675, administrative hearings, for rules on duration of continued services during the administrative hearing process.

(12) **Reversal of an adverse benefit determination.** If the final written notice of the resolution of the appeal or administrative hearing reverses the adverse benefit determination, the BHO must authorize or provide the behavioral health service(s) no later than seventy-two hours from the date it receives notice of the adverse benefit determination being overturned.

(13) **Recovery of the cost of behavioral health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the appeal was pending to the

extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741 (5)(g).

(14) **Recordkeeping and maintenance of appeals.** The BHO must ensure that full records of all appeals and materials received and compiled in the course of processing and attempting to resolve appeals are:

(a) Kept for a period of no less than ten years after the completion of the appeal process;

(b) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

(c) Kept in confidential files separate from the person's clinical record;

(d) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the appeal; and

(e) Accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the appeal;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the appeal, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the appeal was filed.

NEW SECTION

WAC 182-538D-0675 Administrative hearings. (1)

An administrative hearing is a proceeding before an administrative law judge (ALJ) that gives a person, as defined in WAC 182-538D-0655, an opportunity to be heard in disputes about adverse benefit determinations or a decision of a behavioral health organization (BHO) to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) A person may request an administrative hearing for the following reasons:

(a) After a person receives notice that the BHO upheld an adverse benefit determination;

(b) After a person receives a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination; or

(c) If the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670. In this case, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(3) A person who requests an administrative hearing must do so within one of the following time frames:

(a) If continued services are not requested, a hearing must be requested within one hundred twenty days from the date on the written notice of the resolution received from the

BHO at the end of the appeal process or one hundred twenty days from the date on the notice of determination.

(b) If continued medicaid services are requested pending the outcome of the administrative hearing, all of the following apply:

(i) The person appealed a decision on the notice of adverse benefit determination for termination, suspension, or reduction of the person's behavioral health services;

(ii) The person appealed the adverse benefit determination and the BHO upheld the adverse benefit determination; and

(iii) The person requests an administrative hearing and continued behavioral health services within ten days of the date on the written notification of the resolution.

(c) The BHO is not obligated to continue nonmedicaid services pending the result of an administrative hearing when available resources are exhausted, since services cannot be authorized without funding regardless of medical necessity.

(4) If a person or the person's behavioral health provider believes that the time taken for a standard administrative hearing could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited hearing may be requested. Subsection (3)(b) and (c) of this section apply if continued behavioral health services are requested.

(5) The BHO's failure to issue an appeal decision in writing within the time frames in WAC 182-538D-0670 constitutes exhaustion of the appeal process and the person may request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO must continue the person's behavioral health treatment services during the administrative hearing process until one of the following occurs:

(a) The person withdraws the hearing request;

(b) The administrative law judge issues a hearing decision adverse to the person.

(7) If the administrative hearing decision is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the hearing was pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request.

(8) Administrative hearings include adjudicative proceedings and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 182 WAC, chapter 10-08 WAC, or other law. Chapters 34.05 RCW and 182-526 WAC govern cases where a person has an issue involving a service that is funded by medicaid or is not funded by medicaid.

NEW SECTION

WAC 182-538D-0680 A person's rights specific to medicaid recipients. (1) Medicaid recipients have general rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(a) General rights that apply to all people, regardless of whether a person is or is not a medicaid recipient, include:

- (i) All applicable statutory and constitutional rights;
 - (ii) The participant rights provided under WAC 182-538D-0600; and
 - (iii) Applicable necessary supplemental accommodation services.
- (b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:
- (i) Receive medically necessary behavioral health services, consistent with access to care standards adopted by the health care authority in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA's) division of behavioral health and recovery (DBHR) website.
 - (ii) Receive the name, address, telephone number, and any languages offered other than English, of behavioral health providers in your BHO.
 - (iii) Receive information about the structure and operation of the BHO.
 - (iv) Receive emergency or urgent care or crisis services.
 - (v) Receive poststabilization services after you receive emergency or urgent care or crisis services that result in admission to a hospital.
 - (vi) Receive age and culturally appropriate services.
 - (vii) Be provided a certified interpreter and translated material at no cost to you.
 - (viii) Receive information you request and help in the language or format of your choice.
 - (ix) Have available treatment options and alternatives explained to you.
 - (x) Refuse any proposed treatment.
 - (xi) Receive care that does not discriminate against you.
 - (xii) Be free of any sexual exploitation or harassment.
 - (xiii) Receive an explanation of all medications prescribed and possible side effects.
 - (xiv) Make a mental health advance directive that states your choices and preferences for mental health care.
 - (xv) Receive information about medical advance directives.
 - (xvi) Choose a behavioral health care provider for yourself and your child, if your child is under thirteen years of age.
 - (xvii) Change behavioral health care providers at any time for any reason.
 - (xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.
 - (xix) Be free from retaliation.
 - (xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.
 - (xxi) Receive the amount and duration of services you need.
 - (xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Receive medically necessary services in accordance with the early and periodic screening, diagnosis and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy, and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint used as a means of coercion, discipline, convenience, or retaliation.

(xxviii) Receive a second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. Sec. 438.206(b)(3) (2015).

(xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.

(xxx) File a grievance with the behavioral health agency or BHO if you are not satisfied with a service.

(xxxii) Receive a notice of adverse benefit determination so that you may appeal any decision by the BHO that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service, or that denies payment for a service, in whole or in part.

(xxxii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state.

(xxxiii) Request an administrative (fair) hearing if your appeal is not resolved in your favor or if the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670.

(xxxiv) Request services by the behavioral health ombuds office to help you file a grievance or appeal or request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) that provides DBHR-certified mental health services, DBHR-certified substance use disorder services, or both, must ensure the medicaid rights described in subsection (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.

WSR 19-21-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-258—Filed October 14, 2019, 2:57 p.m., effective October 20, 2019]

Effective Date of Rule: October 20, 2019.

Purpose: Amends recreational fishing rules for the Yakima River.

Citation of Rules Affected by this Order: 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 close the Yakima River salmon fishery. The fall Chinook return is expected to be the lowest return on record over that [the] past twenty-eight years. The closure is necessary to meet conservation and hatchery broodstock collection needs for fall Chinook and coho in the Yakima River Basin. 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: October 14, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000S Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective October 20, 2019, until further notice:

Yakima River (Benton Co.): From mouth Hwy. 240 Bridge in Richland to the Grant Avenue Bridge at Prosser: Closed to salmon fishing.

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 19-21-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-259—Filed October 14, 2019, 3:14 p.m., effective October 16, 2019]

Effective Date of Rule: October 16, 2019.

Purpose: Amend Puget Sound commercial shrimp rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000J.

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 returns Puget Sound commercial shrimp rules to permanent rule, closing all remaining areas currently open to commercial shrimp harvest in Puget Sound. 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: October 14, 2019.

Amy H. Windrope
for Kelly Susewind
Director

REPEALER

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

WAC 220-340-52000J Puget Sound shrimp pot and beam trawl fishery—Season. (19-213)

WSR 19-21-100
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 16, 2019, 10:49 a.m., effective October 16, 2019, 10:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting. The Washington state liquor and cannabis board (board) has adopted an emergency rule as new section WAC 314-55-1055 Ingredient disclosure, requiring manufacturers of THC vapor products to disclose all compounds, including ingredients, solvents, additives, etc., used in the production and processing as well as the source of all vapor products, as directed by Executive Order 19-03, dated September 27, 2019.

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

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

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

Reasons for this Finding: The immediate adoption of a rule requiring the manufacturers of THC vapor products to disclose all compounds, including ingredients, solvents, additives, etc., used in the production and processing as well as the source of all vapor products is necessary to prevent and reduce exposure to severe lung disease associated with the use of vapor products. The board has the authority and responsibility to adopt rules for the preservation of public health.

On September 27, 2019, Governor Inslee issued Executive Order 19-03, Addressing the Vaping Use Public Health Crisis. Executive Order 19-03 orders and directs the board, Washington state department of health, and Washington state board of health (SBOH) to engage in specific activities related to vapor products in Washington state, including direction that SBOH use its emergency rule-making authority to impose a ban on all flavored vapor products, including flavored THC vapor products at its meeting on October 9, 2019. The Executive Order notes, "... in 2019, an outbreak of lung injury emerged in previously health [healthy] individuals who had recently vaped THC and/or nicotine vapor products, and the cause of the injury is not yet known ... Washingtonians suffering from this vaping-related lung injury have experienced severe harm to health, and ... in the absence of one or more known, specific harmful substances in this vapor-product health emergency, and in the absence of the ability to fully isolate and remove harmful substances once they are identified, it is imperative that the state respond in a comprehensive and evidence-based manner to address the public health crisis."

Among other directives, Executive Order 19-03 orders and directs the board to require manufacturers of THC vapor products to disclose all compounds (including ingredients, solvents, additives, etc.) used in the production and processing as well as the sources of all vapor products.

On October 10, 2019, SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW.

This emergency rule requires that marijuana licensees disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source and origin. Disclosure must be made to the board on forms provided by the board, and submitted to an email address or other platform provided and maintained by the board. Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rule requiring disclosure of compounds and other substances added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation is necessary for the preservation of public health, safety and general welfare by assisting public health officials in isolating the compounds and products that may be connected to the recent outbreak of lung disease.

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

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

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

Date Adopted: October 16, 2019.

Jane Rushford
Chair

NEW SECTION

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

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

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

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

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

WSR 19-21-101
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 16, 2019, 10:52 a.m., effective October 16, 2019, 10:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-086 Mandatory signage, the Washington state liquor and cannabis board (board) has adopted an emergency rule requiring marijuana licensees to post warning signs regarding the health risks of vapor products where vapor products containing THC are sold, as directed by Executive Order 19-03, dated September 27, 2019.

Citation of Rules Affected by this Order: Amending WAC 314-55-086.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

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

Reasons for this Finding: The immediate adoption of a rule requiring licensed marijuana retailers to conspicuously post a warning sign provided by the board regarding the health risks of vapor products where vapor products, as defined by WAC 246-80-010(12), are sold is necessary to prevent and reduce exposure to severe lung disease associated with the use of vapor products. The board has the authority and responsibility to adopt rules for the preservation of public health.

On September 27, 2019, Governor Inslee issued Executive Order 19-03, Addressing the Vaping Use Public Health Crisis. Executive Order 19-03 orders and directs the board, Washington state department of health, and Washington state board of health (SBOH) to engage in specific activities related to vapor products in Washington state, including direction that SBOH use its emergency rule-making authority to impose a ban on all flavored vapor products, including flavored THC vapor products at its meeting on October 9, 2019. The Executive Order notes, "... in 2019, an outbreak of lung injury emerged in previously healthy individuals who had

recently vaped THC and/or nicotine vapor products, and the cause of the injury is not yet known ... Washingtonians suffering from this vaping-related lung injury have experienced severe harm to health, and ... in the absence of one or more known, specific harmful substances in this vapor-product health emergency, and in the absence of the ability to fully isolate and remove harmful substances once they are identified, it is imperative that the state respond in a comprehensive and evidence-based manner to address the public health crisis."

On October 10, 2019, SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW.

Executive Order 19-03 orders and directs the board to provide consumer warnings by requiring that warning signs regarding the posting of warning signs regarding the health risks of vaping at retailers where vapor products containing THC are sold. The board worked with the industry representatives and marijuana licensees to develop these warning signs.

This emergency rule requires licensed marijuana retailers to conspicuously post a warning sign provided by the board regarding the health risks of vapor products where vapor products, as defined by WAC 246-80-010(12), are sold. Because the outbreak of lung disease is occurring now and growing, the immediate adoption of [a] rule requiring retailers to post a warning sign regarding the health risks of vapor products where they are sold is necessary for the preservation of public health, safety, and general welfare.

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 1, Repealed 0.

Date Adopted: October 16, 2019.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 19-10-076, filed 5/1/19, effective 6/1/19)

WAC 314-55-086 Mandatory signage. (1) All licensed marijuana processors, producers, and retailers, with the exception of licensed retailers with a medical marijuana endorsement, must conspicuously post a notice provided by the board about persons under twenty-one years of age at each entry to all licensed premises. The notice must contain all of the following language: "Persons under twenty-one years of age not permitted on these premises."

(2) All licensed retailers with a medical marijuana endorsement must conspicuously post a notice provided by the board regarding persons under twenty-one years of age at each entry to all licensed medical marijuana premises. The notice must contain all of the following language: "Persons under twenty-one years of age not permitted on these premises without a valid qualifying patient card. Qualifying patients under the age of eighteen must be accompanied by their designated provider at all times."

(3) All licensed marijuana retailers must post warning signs, provided by the board, regarding the health risks of vapor products as defined in WAC 246-80-010(12).

(4) All licensed marijuana retailers must conspicuously post a sign provided by the board regarding the use of marijuana during pregnancy and breastfeeding as follows:

- (a) At each point of sale; and
- (b) In a location easily visible to employees.

~~((4))~~ (5) All licensed marijuana retailers must conspicuously post a notice provided by the board prohibiting the opening of a package of marijuana or marijuana-infused product in public or consumption of marijuana or marijuana-infused products in public. The notice must be posted in plain view at the main entrance of the marijuana retail establishment.

~~((5))~~ (6) All licensed marijuana processors, producers, and retailers must conspicuously post on the premises and make available their current and valid master license or licenses with appropriate endorsements for inspection by board enforcement officers.

~~((6))~~ (7) Firearms prohibited signs provided by the board must be posted at the entrance of each producer, processor, and retailer licensed location.

WSR 19-21-108

EMERGENCY RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 17, 2019, 1:24 p.m., effective October 17, 2019, 1:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Districts received a one-time legislative salary and benefit increase included in the transportation operations allocation for the 2018-19 school year to reflect the compensation increase with the passage of E2SSB 6362 (2018). Districts will likely not have time to utilize the increase in funds in the current school year and will therefore face recovery of transportation funds not expended. A new subsection to WAC 392-141-410 will allow a one-year only carryover of unspent funds for the 2019-20 school year to prevent the recovery of 2018-19 allocation.

Citation of Rules Affected by this Order: Amending WAC 392-141-410.

Statutory Authority for Adoption: RCW 28A.150.290.

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

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

Reasons for this Finding: Immediate adoption of this rule is necessary to preserve general welfare. If this one-year only amendment to WAC 392-141-410 does not go into effect before the beginning of the next school year, school districts will likely be subject to the recovery of unexpended transportation funds that districts received to reflect compensation increases under E2SSB 6362. A permanent rule-making order has been filed, but it will not be effective until November 4, 2019.

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: October 17, 2019.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-17-110, filed 8/21/13, effective 9/21/13)

WAC 392-141-410 Recovery of transportation funds.

The superintendent of public instruction shall recover (take back) state pupil transportation allocations that are not expended for the allowable student transportation program costs under the accounting guidance provided by the superintendent. The amount of the recovery shall be calculated as follows:

(1) Determine the district's state allocation for student transportation operations for the school year.

(2) Determine the district's allowable student transportation costs as follows:

(a) Sum the following amounts:

(i) The district's direct expenditures for general fund program 99 pupil transportation, and for educational service district student transportation operations expenditures in program 70 transportation excluding expenditures associated with the regional coordinator and bus driver training grants;

(ii) Allowable indirect charges equal to the expenditures as calculated pursuant to (a)(i) of this subsection times the state recovery rate as calculated in the district annual financial report;

(b) Subtract the district's revenues for the school year for revenue account 7199 (transportation revenues from other districts).

(3) If the allowable program costs are less than the state allocation, OSPI shall recover the difference.

(4) Special rule for the 2019-20 school year only. School districts may carry over state pupil transportation allocations that were not expended for allowable student transportation program costs from the 2018-19 school year to the 2019-20 school year.

Funds transferred into the transportation vehicle fund shall not be included as allowable transportation program costs for recovery calculations.

WSR 19-21-109
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-262—Filed October 17, 2019, 1:26 p.m., effective October 17, 2019, 1:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Wallace River.

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

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

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

Reasons for this Finding: This emergency rule is needed to open part of the Wallace River to hatchery coho retention. Coho broodstock goals have been met at the Wallace Hatchery and the remainder of hatchery coho are available for harvest. 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: October 16, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000B Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective immediately through December 31, 2019:

Wallace River: From the mouth (farthest downstream railroad bridge) to 200 feet upstream of the water intake to the salmon hatchery:

Salmon: Minimum size 12". Daily limit 2; release all salmon other than hatchery coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2020:

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

WSR 19-21-112
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-260—Filed October 17, 2019, 4:29 p.m., effective October 17, 2019, 4:29 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 220-358-03000I; 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Commercial coho targeting seasons are being opened to access the balance of coho. There is also sufficient balance of URB and steelhead impacts available to the commercial fishery. 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 the compact action of July 30, August 12, August 28, September 25, October 7, October 10, and October 16, 2019. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2018-2027 *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: October 17, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) Tongue Point/South Channel

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights Immediately - October 25

Open Hours: 6 PM - 10 AM

(b) **Area:** The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island.

(i) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(ii) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(c) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

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

(d) **Allowable Sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

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

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights Immediately - October 25

Open hours: 6 PM - 10 AM

(b) **Area:**

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

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

(c) **Gear:**

Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(d) **Allowable sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

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

(3) Deep River Select Area

(a) **Dates:**

Monday, Tuesday, Wednesday, and Thursday nights Immediately - October 18

Monday, Tuesday, Wednesday, Thursday, and Friday nights October 21-November 16

Monday, Tuesday, Wednesday, and Thursday nights November 18-further notice.

Open hours: 6 PM - 9 AM September 25 to November 2, 5 PM - 8 AM thereafter

(b) **Area:** The Deep River fishing area includes 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.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4-inch through September 7, and a 6-inch maximum 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. It is unlawful to operate in any river, stream, or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level.

(d) **Allowable sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through October 5. Starting October 6, white sturgeon possession and sales is prohibited.

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

(4) The white sturgeon possession and sales limit includes all open Select Area fisheries.

(5) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)) in Select Area Fisheries.

(6) Coho commercial tangle net fishery

(a) **Dates:** 5 AM - 7 PM Friday, October 18

5 AM - 7 PM Monday, October 21

5 AM - 7 PM Wednesday, October 23

5 AM - 7 PM Friday, October 25

(b) **Area:** SMRCA 1A, 1B, and 1C. Upper deadline 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) **Santuaries:** Elokomin-A, Cowlitz River, Kalama-A and Lewis-A

(d) **Gear:** Drift nets only. Maximum mesh size is 3-3/4 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms.

A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(e) **Allowable sales:** Adipose fin-clipped coho salmon, pink salmon, and Chinook salmon. Sturgeon, chum and wild coho salmon may not be possessed or sold.

(f) **Miscellaneous:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill

net web is fully retrieved from the water, must not exceed 30 minutes.

Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

Measuring mesh size: Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the outside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

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

Multiple net rule in effect: Which means nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

(4) The white sturgeon possession and sales limit includes all open Select Area fisheries.

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 spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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 220-358-03000I Columbia River seasons below Bonneville. (19-256)

WSR 19-21-114 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-263—Filed October 17, 2019, 5:15 p.m., effective October 18, 2019]

Effective Date of Rule: October 18, 2019.

Purpose: Amend recreational salmon rules for the Columbia River.

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

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

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

Reasons for this Finding: This rule reopens recreational coho fishing from Tongue Point to The Dalles Dam. Opportunity to target hatchery coho is available in the Columbia River mainstem. Impacts to listed steelhead and Chinook are expected to be minimal and within allowed impact limits. This rule is consistent with action taken at the joint state hearing held on October 16, 2019. 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: October 17, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000B Freshwater exceptions to statewide rules—Columbia Notwithstanding the provisions of WAC 220-312-060, effective October 18, 2019:

(1) From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to red navigation marker 2 at Tongue Point on the Oregon bank to Bonneville Dam: Salmon and steelhead: Effective October 18 through October 31, 2019: Daily limit 6, up to 2 adults may

be retained. Release all salmon and steelhead other than hatchery coho.

(2) From Bonneville Dam to the Hood River Bridge: Salmon and steelhead:

(a) Effective October 18 through October 31: Daily limit 6, up to 2 adult may be retained. Release all salmon and steelhead other than hatchery coho.

(b) Effective November 1 through December 31, 2019: Closed.

(3) Hood River Bridge to the Dalles Dam: Salmon and steelhead:

(a) Effective October 18 through October 31: Daily limit 6, up to 2 adult may be retained. Release all salmon and steelhead other than coho.

(b) Effective November 1 through December 31, 2019: Closed.

(4) From the Dalles Dam to the Hwy. 395 Bridge (Pasco/Kennewick): Salmon and Steelhead: Effective immediately through December 31, 2019: Closed

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

(a) Salmon: Effective immediately through October 31, 2019: Daily limit 6, up to 1 adult may be retained.

(b) Steelhead: Effective immediately through December 31, 2019: Closed.

(6) From the Highway 173 Bridge at Brewster upstream to the Highway 17 Bridge near Bridgeport: salmon; effective immediately until further notice:

(a) Daily limit 6.

(b) No more than 2 adult Chinook may be retained.

(c) Release wild adult Chinook, sockeye, and coho.

(d) Anglers who possess a valid two-pole endorsement may fish for salmon with two lines.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective October 18, 2019:

WAC 220-312-06000Z Freshwater exceptions to statewide rules—Columbia (19-234)

WSR 19-21-118
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-261—Filed October 18, 2019, 10:22 a.m., effective October 19, 2019]

Effective Date of Rule: October 19, 2019.

Purpose: Amends recreational sturgeon fishing rules for the Columbia River.

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

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

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

Reasons for this Finding: This rule is needed to open white sturgeon retention in the Columbia River from Wauna powerlines upstream to Bonneville Dam and the Cowlitz River. The legal-size population is large enough to allow for a conservative retention fishery within the lower Columbia River. This action is consistent with decisions made by the states of Washington and Oregon on September 5, October 7, and October 16, 2019. 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: October 17, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

From Wauna powerlines upstream to Bonneville Dam, including the Cowlitz River:

(a) It is permissible to retain white sturgeon on the following dates: October 19 and October 24, 2019. The daily limit of white sturgeon is one fish between 44-inches minimum and 50-inches maximum fork length.

(b) Catch and release angling is permissible on days not open to sturgeon retention.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 25, 2019:

WAC 220-312-06000C Freshwater exceptions to statewide rules—Columbia River.

WSR 19-21-128
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-264—Filed October 18, 2019, 5:25 p.m., effective October 24, 2019]

Effective Date of Rule: October 24, 2019.

Purpose: Amend Puget Sound recreational crab fishing rules.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000G and 220-330-04000H; and amending WAC 220-330-040.

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

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

Reasons for this Finding: This emergency rule is needed to close the recreational crab harvest in Marine Areas 8-1 and 8-2 because the state quota share has been exceeded in these areas. Preliminary summer harvest estimates indicate that the recreational fishery can remain open in the marine areas described in this regulation and contribute to achieving 50/50 harvest goal with the treaty tribes. 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: October 18, 2019.

Kelly Susewind
 Director

NEW SECTION

WAC 220-330-04000H Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective October 24, 2019 until further notice, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

Marine Area 4 east of the Bonilla-Tatoosh line, Marine Area 5, Marine Area 6, Marine Area 7, and Marine Area 9

except those waters between the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point are open to fish for crab for personal use.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 24, 2019:

WAC 220-330-04000G Areas and seasons—Personal use.

The following section of the Washington Administrative Code is repealed effective January 1, 2020:

WAC 220-330-04000H Crab—Areas and seasons—Personal use.

WSR 19-21-140
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-265—Filed October 21, 2019, 4:00 p.m., effective October 28, 2019]

Effective Date of Rule: October 28, 2019.

Purpose: Amend Puget Sound commercial gillnet fishery rules.

Citation of Rules Affected by this Order: Repealing WAC 220-354-16000V; and amending WAC 220-354-160.

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

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

Reasons for this Finding: This emergency rule is needed to correct a clerical error that assigned an incorrect gillnet opening in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B of October 28 in the permanent rule. This rule corrects that opening to October 29 as agreed to with comanagers during the 2019/2020 North of Falcon proceedings. 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: October 21, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000V Puget Sound salmon—Gill-net—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective October 28 through October 29, 2019:

Areas	Open Periods	Mesh Size
12 and 12B:	Closed 10/28 7 a.m. - 7 p.m. 10/29	6 1/4"

REPEALER

The following section of the Washington Administrative Code is repealed effective October 30, 2019:

WAC 220-354-16000V Puget Sound salmon—Reef net—Open periods.

WSR 19-21-160

EMERGENCY RULES

WASHINGTON STATE UNIVERSITY

[Filed October 22, 2019, 1:29 p.m., effective October 22, 2019, 1:29 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 28B.30.150.

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

Reasons for this Finding: The amount of time required for Washington State University (WSU) to currently schedule student conduct hearings presents potential Title IX (of the Civil Rights Act) compliance concerns and may negatively impact both reporting and responding students awaiting a conduct hearing. Therefore, WSU proposes an emergency change to WAC 504-26-110 in order to reduce the difficulty in scheduling cases for a hearing. This change reduces the university conduct board's size from five members to three members, in alignment with the academic integrity hearing board and the university appeals board. This reduc-

tion in size will reduce waiting times for hearings by providing more availability of conduct board members in the established conduct board member pool and by providing more flexibility in the scheduling of hearings. Reduced waiting times and more flexible hearing schedules will reduce the risk of noncompliance with Title IX's timely resolution requirements, while also promoting the well-being of reporting and responding students awaiting a conduct board hearing.

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

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

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

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

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

Date Adopted: October 22, 2019.

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

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

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

WSR 19-21-165

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-266—Filed October 22, 2019, 3:35 p.m., effective October 26, 2019, 12:01 p.m.]

Effective Date of Rule: October 26, 2019, 12:01 p.m.

Purpose: Amend recreational razor clam rules.

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

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

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

Reasons for this Finding: This rule is needed to open razor clam harvest opportunity on some coastal beaches. Survey results show that adequate clams are available for harvest in Razor Clam Areas 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 22, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. October 26, 2019 through 11:59 p.m. October 26, 2019, and 12:01 p.m. October 28, 2019 through 11:59 p.m. October 28, 2019, and 12:01 p.m. October 30, 2019 through 11:59 p.m. October 30, 2019, and 12:01 p.m. November 1, 2019 through 11:59 p.m. November 1, 2019, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. October 27, 2019 through 11:59 p.m. October 27, 2019, and 12:01 p.m. October 29, 2019 through 11:59 p.m. October 29, 2019, and 12:01 p.m. October 31, 2019 through 11:59 p.m. October 31, 2019, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 2, 2019:

WAC 220-330-1600000G Razor clams—Areas and seasons.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-330-1600000G is probably intended to be WAC 220-330-16000G.

WSR 19-21-180 EMERGENCY RULES LIQUOR AND CANNABIS BOARD

[Filed October 23, 2019, 11:25 a.m., effective October 23, 2019, 11:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-077 Marijuana processor license—Privileges, requirements and fees, the Washington state liquor and cannabis board (board) has adopted emergency rules that establish a new section of rule allowing the board to take disciplinary action again [against] any processor failing to comply with the provisions of chapter 246-80 WAC, Vapor products and flavors.

Citation of Rules Affected by this Order: New [amending] WAC 314-55-077(13).

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

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

Reasons for this Finding: The immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of Washington state board of health (SBOH) rules described in chapter 246-80 WAC banning the sale of flavored vapor products. The board has the authority and responsibility to adopt rules for the preservation of public health.

The Centers for Disease Control, United States Food and Drug Administration, Washington state department of health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including twenty-six deaths. Twelve cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to

twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remain unknown, and no single product or substance has been linked to all lung injury cases.

The SBOH health impact review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products.

On October 10, 2019, SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, and consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis.

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

Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rules that establish provisions necessary for both the enforcement of chapter 246-80 WAC and preservation of public health, safety and general welfare. The board filed a preproposal statement of inquiry on May 29, 2019, as WSR 19-12-029 that includes revision and updates exclusive to WAC 314-55-077 (8) and (9). This emergency rule is not being considered as part of any future rule proposal associated with WSR 19-12-029.

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 1, Repealed 0.

Date Adopted: October 23, 2019.

Jane Rushford
Chair

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

WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees. (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and

marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) Application and license fees.

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

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

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

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

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the WSLCB or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

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

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

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

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

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

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Fruit or vegetable butters;

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

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

(vii) Dried or cured meats.

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

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

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

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

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

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

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

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

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

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

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

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

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

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

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

WSR 19-21-181
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 23, 2019, 11:28 a.m., effective October 23, 2019, 11:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-079 Marijuana retailer license—Privileges, requirements and fees, the Washington state liquor and cannabis board (board) has adopted emergency rules that establish a new section of rule allowing the board to take disciplinary action again [against] any processor failing to comply with the provisions of chapter 246-80 WAC, Vapor products and flavors.

Citation of Rules Affected by this Order: New [amending] WAC 314-55-079(14).

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

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

Reasons for this Finding: The immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of Washington state board of health (SBOH) rules described in chapter 246-80 WAC banning the sale of flavored vapor products. The board has the authority and responsibility to adopt rules for the preservation of public health.

The Centers for Disease Control, United States Food and Drug Administration, Washington state department of health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including twenty-six deaths. Twelve cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remain unknown, and no single product or substance has been linked to all lung injury cases.

The SBOH health impact review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products.

On October 10, 2019, SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, and consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis.

This emergency rule allows the board to take disciplinary action against any retailer that fails to comply with the provisions of SBOH emergency rules described in chapter 246-80 WAC and bridges the enforcement requirements contained therein with the authority of chapter 69.50 RCW realized in WAC 314-55-079.

Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rules that establish summary license suspension and petition for stay provisions are necessary for both the enforcement of chapter 246-80 WAC and preservation of public health, safety and general welfare.

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 1, Repealed 0.

Date Adopted: October 23, 2019.

Jane Rushford
Chair

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

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

(2) The WSLCB may accept applications for marijuana retail licenses at time frames published on its website at www.lcb.wa.gov. Using estimated consumption data and

population data obtained from the office of financial management (OFM) population data, the WSLCB will determine the maximum number of marijuana retail locations per county.

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

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

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

(4) Application and license fees.

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

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

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

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

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

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

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

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

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

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

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

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

WSR 19-21-182
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 23, 2019, 11:32 a.m., effective October 23, 2019, 11:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-35 WAC, Vapor products, the Washington state liquor and cannabis board (board) has adopted emergency rules that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of chapter 246-80 WAC, Vapor products and flavors, effective October 10, 2019.

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

Statutory Authority for Adoption: Chapter 70.345 RCW.

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

Reasons for this Finding: The immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of Washington state board of health (SBOH) rules described in chapter 246-80 WAC banning the sale of flavored vapor products. The board has the authority and responsibility to adopt rules for the preservation of public health.

The Centers for Disease Control, United States Food and Drug Administration, Washington state department of health, and many other state and local health departments are currently investigating a multistate outbreak of lung disease associated with vapor product use. More than one thousand cases have been reported across the United States, including twenty-six deaths. Twelve cases of lung injury have been reported in Washington state, and the number of cases is expected to grow. Approximately eighty percent of the cases nationwide have been reported in individuals under thirty-five years of age, with sixteen percent of the cases involving individuals under eighteen years of age and twenty-one percent of the cases involving individuals from eighteen to twenty years old. All reported patients have a history of using vapor products. The specific chemical exposure(s) causing the disease remain unknown, and no single product or substance has been linked to all lung injury cases.

The SBOH health impact review of HB 1932 found strong evidence that prohibiting the sale of flavored vapor products will likely decrease initiation and use of vapor products among adolescents and young adults. Reducing the initiation and use of vapor products by youth and young adults will reduce the exposure of our most vulnerable population to the current outbreak of severe lung disease associated with the use of vapor products.

On October 10, 2019, SBOH issued emergency rules as WSR 19-21-050, prohibiting the sale of flavored vapor products by persons licensed under chapter 69.50 or 70.345 RCW, and consistent with the directives of Executive Order 19-03 Addressing the Vaping Use Public Health Crisis.

These emergency rules serve a two-pronged purpose:

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

Because the outbreak of lung disease is occurring now and growing, the immediate adoption of rules that establish summary license suspension and petition for stay provisions are necessary for both the enforcement of chapter 246-80 WAC and preservation of public health, safety and general welfare. The board filed a rule proposal on October 16, 2019, as WSR 19-21-102. These rules may be extended, rescinded or considered for inclusion in adopted rules at a later date as appropriate.

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

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

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

Date Adopted: October 23, 2019.

Jane Rushford
Chair

NEW SECTION

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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