

**WSR 16-17-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-189—Filed August 3, 2016, 2:09 p.m., effective August 8, 2016]

Effective Date of Rule: August 8, 2016.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100Q; and amending WAC 220-52-071.

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

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

Reasons for this Finding: Harvestable surpluses of sea cucumbers exist in the districts specified to allow for commercial 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 3, 2016.

J. W. Unsworth  
 Director

NEW SECTION

**WAC 220-52-07100R Sea cucumbers** Notwithstanding the provisions of WAC 220-52-071, effective August 8, 2016, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

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

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following areas of Sea Cucumber District 2 Monday through Friday of each week: 29, 25 A, B, C, D, and E, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and

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

(3) Sea cucumber harvest using shellfish diver gear is allowed in the following areas of Sea Cucumber District 5 Monday through Friday of each week: 28B, 28C, 28D, and 28A except for all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(4) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 2,500 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 2,500 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum.

REPEALER

The following section of the Washington Administrative code is repealed effective August 8, 2016:

WAC 220-52-07100Q Sea cucumbers. (16-187)

**WSR 16-17-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-199—Filed August 4, 2016, 11:24 a.m., effective August 4, 2016, 11:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Frank's Pond.

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

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

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

Reasons for this Finding: Frank's Pond in Chelan County is a newly constructed pond and this emergency rule will continue to provide juvenile anglers an exclusive fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 4, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19500I Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, it is unlawful to fish in Frank's Pond (Chelan Co.) except as provided in this section:

(1) Effective immediately through October 31, 2016, open to juvenile anglers only for fishing.

(2) Night closure is in effect.

(3) Daily limit of 2 trout - no size restrictions.

(4) All other game fish, daily limit 5 - no size restrictions.

#### REPEALER

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

WAC 220-310-19500I Freshwater exception to statewide rules—Eastside.

#### WSR 16-17-013 EMERGENCY RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed August 5, 2016, 9:41 a.m., effective August 5, 2016, 9:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The daily medicaid payment rates are changing per collective bargaining and the fiscal year 17 state budget. The department is amending WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services, to update the rate table included in WAC 388-105-0005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

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 WAC includes a rate table that was updated per legislative budget decisions. The permanent rule change is in process. The filing of this emergency rule is necessary due to the timing of the start of the fiscal year.

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

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

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

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

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

Date Adopted: August 4, 2016.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-028, filed 2/9/16, effective 3/11/16)

**WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the ~~((comprehensive assessment reporting evaluation (CARE)))~~ CARE tool and ~~((that))~~ reside ~~((in adult family homes (AFH) and))~~ at an AFH or assisted living ((facilities) facility contracted to provide ((assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC))) AL, ARC, or EARC services. For contracted ~~((AFH))~~ adult family homes (AFH) and assisted living facilities contracted to provide ((AL, ARC, and EARC)) assisted living (AL), adult residential care (ARC), or enhanced adult residential care (EARC) services, the department pays the following daily rates for ~~((care of a))~~ medicaid residents who have been assessed using the comprehensive assessment reporting evaluation (CARE) tool:**

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE |                    |                 |          |          |  |
|---|--------------------|-----------------|----------|----------|--|
| KING COUNTY   |                    |                 |          |          |  |
| CARE CLASSIFICATION   | AL Without Capital | AL With Capital | ARC      | EARC     | AFH                                      |
|   | Add-on             | Add-on          |          |          |  |
| A Low   | \$67.22            | \$72.64         | \$47.67  | \$47.67  | <del>(\$49.97)</del><br><u>\$52.47</u>   |
| A Med   | \$72.74            | \$78.16         | \$54.03  | \$54.03  | <del>(\$56.53)</del><br><u>\$59.36</u>   |
| A High  | \$81.57            | \$86.99         | \$59.30  | \$59.30  | <del>(\$63.11)</del><br><u>\$66.27</u>   |
| B Low   | \$67.22            | \$72.64         | \$47.67  | \$47.67  | <del>(\$50.21)</del><br><u>\$52.72</u>   |
| B Med   | \$74.96            | \$80.39         | \$60.39  | \$60.39  | <del>(\$63.41)</del><br><u>\$66.58</u>   |
| B Med-High  | \$84.83            | \$90.25         | \$64.19  | \$64.19  | <del>(\$67.85)</del><br><u>\$71.24</u>   |
| B High  | \$89.28            | \$94.70         | \$73.31  | \$73.31  | <del>(\$77.40)</del><br><u>\$81.27</u>   |
| C Low   | \$72.74            | \$78.16         | \$54.03  | \$54.03  | <del>(\$56.53)</del><br><u>\$59.36</u>   |
| C Med   | \$81.57            | \$86.99         | \$67.70  | \$67.70  | <del>(\$71.84)</del><br><u>\$75.43</u>   |
| C Med-High  | \$101.43           | \$106.85        | \$90.09  | \$90.09  | <del>(\$93.72)</del><br><u>\$98.41</u>   |
| C High  | \$102.44           | \$107.86        | \$90.95  | \$90.95  | <del>(\$95.01)</del><br><u>\$99.76</u>   |
| D Low   | \$74.96            | \$80.38         | \$72.87  | \$72.87  | <del>(\$73.21)</del><br><u>\$59.36</u>   |
| D Med   | \$83.23            | \$88.65         | \$84.35  | \$84.35  | <del>(\$89.32)</del><br><u>\$75.43</u>   |
| D Med-High  | \$107.49           | \$112.91        | \$107.13 | \$107.13 | <del>(\$107.23)</del><br><u>\$112.59</u> |
| D High  | \$115.79           | \$121.21        | \$115.79 | \$115.79 | <del>(\$121.91)</del><br><u>\$128.01</u> |
| E Med   | \$139.84           | \$145.26        | \$139.84 | \$139.84 | <del>(\$147.04)</del><br><u>\$154.39</u> |
| E High  | \$163.89           | \$169.31        | \$163.89 | \$163.89 | <del>(\$172.19)</del><br><u>\$180.80</u> |

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE |                    |                 |         |         |  |
|---|--------------------|-----------------|---------|---------|--|
| METROPOLITAN COUNTIES*  |                    |                 |         |         |  |
| CARE CLASSIFICATION   | AL Without Capital | AL With Capital | ARC     | EARC    | AFH                                    |
|   | Add-on             | Add-on          |         |         |  |
| A Low   | \$61.69            | \$66.61         | \$47.67 | \$47.67 | <del>(\$49.97)</del><br><u>\$52.47</u> |

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>METROPOLITAN COUNTIES* |                    |                 |          |          |  |
|---|--------------------|-----------------|----------|----------|--|
| CARE CLASSIFICATION   | AL Without Capital | AL With Capital | ARC      | EARC     | AFH                                      |
|   | Add-on             | Add-on          |          |          |  |
| A Med   | \$65.02            | \$69.94         | \$51.91  | \$51.91  | <del>(\$54.34)</del><br><u>\$57.06</u>   |
| A High  | \$79.37            | \$84.29         | \$56.56  | \$56.56  | <del>(\$59.81)</del><br><u>\$62.80</u>   |
| B Low   | \$61.69            | \$66.61         | \$47.67  | \$47.67  | <del>(\$50.21)</del><br><u>\$52.72</u>   |
| B Med   | \$70.52            | \$75.44         | \$57.22  | \$57.22  | <del>(\$60.10)</del><br><u>\$63.11</u>   |
| B Med-High  | \$79.83            | \$84.75         | \$60.81  | \$60.81  | <del>(\$64.37)</del><br><u>\$67.59</u>   |
| B High  | \$87.07            | \$91.99         | \$71.25  | \$71.25  | <del>(\$75.24)</del><br><u>\$79.00</u>   |
| C Low   | \$65.02            | \$69.94         | \$52.12  | \$52.12  | <del>(\$54.74)</del><br><u>\$57.48</u>   |
| C Med   | \$79.37            | \$84.29         | \$66.84  | \$66.84  | <del>(\$70.12)</del><br><u>\$73.63</u>   |
| C Med-High  | \$98.10            | \$103.02        | \$83.73  | \$83.73  | <del>(\$87.17)</del><br><u>\$91.53</u>   |
| C High  | \$99.09            | \$104.01        | \$89.04  | \$89.04  | <del>(\$92.41)</del><br><u>\$97.03</u>   |
| D Low   | \$70.52            | \$75.44         | \$71.87  | \$71.87  | <del>(\$71.62)</del><br><u>\$75.20</u>   |
| D Med   | \$80.98            | \$85.90         | \$82.67  | \$82.67  | <del>(\$86.95)</del><br><u>\$91.30</u>   |
| D Med-High  | \$103.98           | \$108.90        | \$104.50 | \$104.50 | <del>(\$103.99)</del><br><u>\$109.19</u> |
| D High  | \$112.63           | \$117.55        | \$112.63 | \$112.63 | <del>(\$117.98)</del><br><u>123.88</u>   |
| E Med   | \$135.52           | \$140.44        | \$135.52 | \$135.52 | <del>(\$141.91)</del><br><u>\$149.01</u> |
| E High  | \$158.40           | \$163.32        | \$158.40 | \$158.40 | <del>(\$165.84)</del><br><u>\$174.13</u> |

\*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>NONMETROPOLITAN COUNTIES** |                    |                 |         |         |  |
|---|--------------------|-----------------|---------|---------|--|
| CARE CLASSIFICATION   | AL Without Capital | AL With Capital | ARC     | EARC    | AFH                                    |
|   | Add-on             | Add-on          |         |         |  |
| A Low   | \$60.61            | \$65.85         | \$47.67 | \$47.67 | <del>(\$49.97)</del><br><u>\$52.47</u> |

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE  
NONMETROPOLITAN COUNTIES\*\*

| CARE CLASSIFICATION | AL Without Capital | AL With Capital | ARC      | EARC     | AFH                                      |
|---------------------|--------------------|-----------------|----------|----------|--|
|                     | Add-on             | Add-on          |          |          |  |
| A Med               | \$65.02            | \$70.26         | \$50.86  | \$50.86  | <del>(\$53.26)</del><br><u>\$55.92</u>   |
| A High              | \$79.37            | \$84.61         | \$55.66  | \$55.66  | <del>(\$58.73)</del><br><u>\$61.67</u>   |
| B Low               | \$60.61            | \$65.85         | \$47.67  | \$47.67  | <del>(\$50.21)</del><br><u>\$52.72</u>   |
| B Med               | \$70.52            | \$75.76         | \$56.16  | \$56.16  | <del>(\$59.01)</del><br><u>\$61.96</u>   |
| B Med-High          | \$79.83            | \$85.07         | \$59.68  | \$59.68  | <del>(\$63.13)</del><br><u>\$66.29</u>   |
| B High              | \$87.07            | \$92.31         | \$67.41  | \$67.41  | <del>(\$71.23)</del><br><u>\$74.79</u>   |
| C Low               | \$65.02            | \$70.26         | \$50.86  | \$50.86  | <del>(\$53.26)</del><br><u>\$55.92</u>   |
| C Med               | \$79.37            | \$84.61         | \$63.20  | \$63.20  | <del>(\$67.48)</del><br><u>\$70.85</u>   |
| C Med-High          | \$98.10            | \$103.34        | \$80.54  | \$80.54  | <del>(\$83.90)</del><br><u>\$88.10</u>   |
| C High              | \$99.09            | \$104.33        | \$84.18  | \$84.18  | <del>(\$87.47)</del><br><u>\$91.84</u>   |
| D Low               | \$70.52            | \$75.76         | \$67.96  | \$67.96  | <del>(\$67.80)</del><br><u>\$71.19</u>   |
| D Med               | \$80.98            | \$86.22         | \$78.17  | \$78.17  | <del>(\$82.29)</del><br><u>\$86.40</u>   |
| D Med-High          | \$103.98           | \$109.22        | \$98.79  | \$98.79  | <del>(\$98.41)</del><br><u>\$103.33</u>  |
| D High              | \$106.48           | \$111.72        | \$106.48 | \$106.48 | <del>(\$111.62)</del><br><u>\$117.20</u> |
| E Med               | \$128.11           | \$133.35        | \$128.11 | \$128.11 | <del>(\$134.23)</del><br><u>\$140.94</u> |
| E High              | \$149.75           | \$154.99        | \$149.75 | \$149.75 | <del>(\$156.86)</del><br><u>\$164.70</u> |

\*\* Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

**WSR 16-17-018**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed August 5, 2016, 1:58 p.m., effective August 5, 2016, 1:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add prior authorization requirements for providers prescribing thickeners to clients younger than one year of age.

Citation of Existing Rules Affected by this Order: Amending WAC 182-554-500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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 Food and Drug Administration (FDA) has issued a warning not to give infants thickeners, particularly those born prematurely, because there is substantive evidence it puts them at risk of necrotizing enterocolitis. The recommendation is supported by American Academy of Pediatrics. This rule change is intended to follow the FDA's warning. The agency held a public hearing for this rule on January 5, 2016. As a result of comments received at the public hearing, the agency is rewriting the rule and will refile the CR-102 and hold another public hearing. The agency has completed the initial workgroup stage, and internal review of rewritten WAC 182-554-500.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: August 5, 2016.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-554-500 Covered enteral nutrition products, equipment and related supplies—Orally administered—Clients twenty years of age and younger only.** (1) The department covers orally administered enteral nutrition

products for clients twenty years of age and younger only, as follows:

(a) The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;

(b) The client is able to manage their feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(c) The client meets one of the following clinical criteria:

(i) Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:

(A) Be in a wasting state;

(B) Have a weight-for-length less than or equal to the fifth percentile if the client is three years of age or younger; or

(C) Have a body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or

(II) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or

(D) Have a BMI of:

(I) Less than or equal to twenty-five; and

(II) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(ii) Amino acid, fatty acid, and carbohydrate metabolic disorders.

(A) The client must require a specialized nutrition product; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(iii) Cancer(s).

(A) The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;

(B) The department pays for orally administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and

(C) Providers must follow the department's expedited prior authorization process to receive payment.

(iv) Chronic renal failure.

(A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(v) Decubitus pressure ulcers.

(A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and

(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.

(vi) Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.

(A) The provider must obtain prior authorization to receive payment; and

(B) The client must have:

(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and

(II) A weight-for-length less than or equal to the fifth percentile if the client is two years of age or younger; or

(III) A BMI of:

(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or

(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or

(IV) Have a BMI of:

(aa) Less than or equal to twenty-five; and

(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(vii) Medical conditions (e.g., dysphagia) requiring a thickener.

(A) The client must be older than one year of age and:

(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(B) Providers must follow the ~~((department's))~~ agency's expedited prior authorization process to receive payment.

(C) If prescribing for a child younger than one year of age, providers must request prior authorization and:

(I) Include clinical documentation that supports the medical necessity of the request; and

(II) Include the report recommending a thickener from a speech therapist or occupational therapist who specializes in dysphagia.

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(I) Client is not eligible for the women, infants, and children (WIC) program; or

(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or

(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: <http://www1.dshs.wa.gov/msa/forms/eforms.html>. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.

**WSR 16-17-021  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-202—Filed August 5, 2016, 4:44 p.m., effective August 5, 2016, 4:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

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

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 provide for a commercial fishery because the harvest non-treaty share of Nooksack and Samish Chinook as agreed to with the tribal comanagers in Puget Sound Salmon Management and Catch Reporting Areas 7B and 7C and harvest non-treaty share of Port Gamble Bay coho as agreed to with the tribal comanagers in Puget Sound Salmon Management and Catch Reporting Area 9A. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 5, 2016.

J. W. Unsworth  
Director

NEW SECTION

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

| Open Areas | Open Periods                          |
|------------|---------------------------------------|
| 7B, 7C     | 6 AM - 8 PM 8/10, 8/17, 8/24 and 8/31 |

NEW SECTION

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

| Open Areas | Open Periods  | Mesh Size      |
|------------|---|----------------|
| 7B, 7C     | 7 PM - 8 AM nightly 8/7, 8/8, 8/9, 8/14, 8/15, 8/16, 8/17, 8/21, 8/22, 8/23, and 8/24; 7 PM 8/28 through 7 AM 9/2 | Minimum 7 inch |
| 9A         | 7 AM 8/14 through 11:59 PM 9/3  | Minimum 5 inch |

REPEALER

The following sections of the Washington Administrative Code are repealed effective 11:59 p.m. September 3, 2016:

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

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

**WSR 16-17-034  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-203—Filed August 9, 2016, 9:49 a.m., effective August 9, 2016, 11:59 p.m.]

Effective Date of Rule: August 9, 2016, 11:59 p.m.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100S; and amending WAC 220-52-051.

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



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

Reasons for this Finding: The 2016 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes the pot fishery season for spot shrimp in Shrimp Management Area 1A and Catch Area 23A-E, as the quota will be reached; and (2) changes the spot shrimp biweekly limits in Shrimp Management Area 1C and Catch Area 25A. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 9, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-52-05100T Puget Sound shrimp pot and trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

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

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

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

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

(b) The spot shrimp catch accounting biweekly management period is as follows:

(i) August 10 through August 23, 2016.

(c) Effective immediately until 11:59 p.m. August 23, 2016, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200 pounds per biweekly management period, with the following exceptions:

(i) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per biweekly management period in Shrimp Management Area 1C or to exceed 600 pounds per biweekly management period in Catch Area 25A.

(d) Effective 12:01 a.m. August 24, 2016, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week. The spot shrimp catch accounting week is Wednesday through Tuesday.

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

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

(2) Shrimp trawl gear:

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

(b) Those portions of Catch Areas 20B, 21A and 22A within SMA 1B are open.

(c) Catch Area 20A is open.

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

**Reviser's note:** The typographical 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 11:59 p.m. August 9, 2016:

WAC 220-52-05100S Puget Sound shrimp pot and beam trawl fishery—Season. (16-190)

**WSR 16-17-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-204—Filed August 9, 2016, 1:27 p.m., effective August 14, 2016, 9:00 p.m.]

Effective Date of Rule: August 14, 2016, 9:00 p.m.

Purpose: Amend rules in the Puget Sound recreational shrimp fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500A, 220-56-32500B and 220-56-31000C; and amending WAC 220-56-325 and 220-56-310.

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

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

Reasons for this Finding: This emergency rule is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state recreational share of spot shrimp has been taken in Marine Area 6. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 9, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-56-32500B Shrimp—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-325, effective immediately until further notice:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5 are open to the harvest of all shrimp species, except as follows:

(a) Effective 11:59 p.m. September 15, 2016, until further notice, all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5 are open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

(2) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 6 and 7, except as follows:

(a) Marine Area 6, and the portion of Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lope Island, then east of a line projected from

the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, then east of a line projected true north and south from the western tip of Crane Island, then east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary (defined as Marine Area 7 East):

(i) Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

(ii) It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) All waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(4) All waters equal to or less than 250 feet in depth in Marine Area 13 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 250 feet deep.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective 9:00 p.m. August 14, 2016:

WAC 220-56-32500A Shrimp—Areas and seasons. (16-186)

WAC 220-56-31000C Shellfish—Daily limits. (16-186)

The following section of the Washington Administrative Code is repealed effective October 16, 2016:

WAC 220-56-32500B Shrimp—Areas and seasons.

#### **WSR 16-17-042 EMERGENCY RULES LIQUOR AND CANNABIS BOARD**

[Filed August 10, 2016, 10:21 a.m., effective August 10, 2016, 10:21 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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

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

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

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

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

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

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

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

Date Adopted: August 10, 2016.

Jane Rushford  
Chair

#### NEW SECTION

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

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

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

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

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

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

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

The WSLCB may add the newly approved PT program to the list of approved PT programs as appropriate.

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

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

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

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

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

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

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

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

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

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

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

(b) The WSLCB will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. WSLCB may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the WSLCB a deficiency report identifying the root cause of the failed PT,

and successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider. The supplemental PT studies must be performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(13) If a laboratory fails to remediate and have its certification reinstated under subsection (12)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

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

#### NEW SECTION

**WAC 314-55-1035 Laboratory certification—Suspension and revocation.** (1) The board may summarily suspend or revoke the certification of any third-party testing lab certified under WAC 314-55-102 for any of the following reasons:

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

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

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

(i) On the application for certification;

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Third violation within a three-year period: Revocation of laboratory certification under WAC 314-55-102.

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

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

#### **WSR 16-17-044**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 16-193—Filed August 10, 2016, 1:48 p.m., effective September 1, 2016]

Effective Date of Rule: September 1, 2016.

Purpose: Amend freshwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000K; and amending WAC 220-310-190.

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

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

Reasons for this Finding: This emergency rule is needed to reopen Lake Washington and Lake Sammamish since they had been closed under a comanager agreement to protect coho salmon. The comanagers have since agreed that recreational fisheries for trout and other game fish in these lakes will not significantly affect coho salmon. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 10, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-310-19000K Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective September 1 through October 31, 2016, the following rules apply:

(1) **Lake Washington** (King Co., including that portion of Sammamish River from 68th Ave. NE Bridge downstream): open to fishing for trout and other game fish. Statewide minimum size and daily limits in effect.

(2) **Lake Washington Ship Canal** (King Co., waters east of a north-south line 400 feet west of the Chittenden (Ballard) Locks to the Montlake Bridge, including Lake Union, Portage Bay, and Salmon Bay): open to fishing for trout and other game fish. Statewide minimum size and daily limits in effect.

(3) **Lake Sammamish** (King Co.): Open to fishing for trout and other game fish. Statewide minimum size and daily limits in effect. Release Kokanee.

### REPEALER

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

WAC 220-310-19000K Freshwater exceptions to statewide rules—Puget Sound.

**WSR 16-17-050**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-205—Filed August 11, 2016, 3:12 p.m., effective August 22, 2016, 6:00 a.m.]

Effective Date of Rule: August 22, 2016, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Allows sales of fish during the treaty commercial gillnet fisheries in SMCRA 1F, 1G, 1H commonly known as Zone 6. The regulation continues to allow the sale of fish caught in Zone 6 Columbia River tribal net, platform and hook and line gear, in the Yakama Nation tributary fisheries when open under Yakama Nation regulations and in the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The forecast for fall Chinook is nine hundred sixty thousand two hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on July 27 and August 9, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302

F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: August 11, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-32-05100B Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: 2016 fall season:

6 AM Monday August 22 to 6 PM Friday August 26

6 AM Monday August 29 to 6 PM Friday September 2

6 AM Monday September 5 to 6 PM Friday September 9

6 AM Monday September 12 to 6 PM Friday September

16

(b) Gear: Gill nets. 8-inch minimum mesh restriction.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, including the Spring Creek Hatchery sanctuary.

(2) Open Area: 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, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect, including the Spring Creek Hatchery sanctuary.

(3) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: immediately until further notice and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Wind River, Drano Lake, and Klickitat River.

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

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length. Live release of all oversize and under-size sturgeon is required.

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

(a) Participants:

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

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

(b) Season: immediately until 11:59 PM October 31, 2016. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hook and line and/or platform gear identified in tribal rules.

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

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

**Reviser's note:** The typographical 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 6:00 a.m. August 22, 2016:

WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam. (16-197)

**WSR 16-17-051**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-206—Filed August 11, 2016, 3:13 p.m., effective August 16, 2016]

Effective Date of Rule: August 16, 2016.

Purpose: Amend recreational fishing rules for coastal salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000Y; and amending WAC 232-28-620.

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

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

Reasons for this Finding: The recreational salmon fishery has enough remaining on the Chinook guideline in Marine Area 1 to allow the daily limit to be liberalized to include two Chinook. Increasing the limit will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 11, 2016.

J. W. Unsworth  
Director

### NEW SECTION

**WAC 232-28-62000Z Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective August 16, 2016, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

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

(a) Immediately through August 31:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

(b) September 1 until further notice: Closed.

(c) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-56-195.

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

(a) Immediately through August 21:

(i) Daily limit of two salmon.

(ii) Release coho.

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

(b) August 22 until further notice - Closed.

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

(a) Immediately until further notice:

(i) Daily limit of 6 salmon; no more than 4 may be adult salmon.

(ii) Release wild Chinook.

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

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

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

(a) Immediately until further notice:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

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

(b) The Westport Boat Basin and Ocean Shores Boat Basin are open only August 16 until further notice.

(i) Daily limit of 6 salmon; no more than 4 may be adult salmon.

(ii) Release Chinook.

(iii) Night closure and anti-snagging rule in effect.

(5) **Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):**

(a) Immediately until further notice: Closed.

(6) **Catch Record Card Area 3:**

(a) Immediately through August 21:

(i) Daily limit of 2 salmon.

(ii) Release coho.

- (iii) In years ending in odd numbers, two additional pink salmon may be retained as part of the daily limit.
- (b) August 22 until further notice: Closed.
- (7) **Catch Record Card Area 4:**
  - (a) Immediately through August 21:
    - (i) Daily limit of 2 salmon.
    - (ii) Release coho.
    - (iii) In years ending in odd numbers, two additional pink salmon may be retained as part of the daily limit.
    - (iv) Waters east of the Bonilla-Tatoosh line closed.
    - (v) Release chum salmon
  - (b) August 22 until further notice: Closed.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective August 16, 2016:

WAC 232-28-62000Y Coastal salmon—Saltwater seasons and daily limits. (16-185)

**WSR 16-17-052**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-207—Filed August 11, 2016, 3:15 p.m., effective August 11, 2016, 3:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000L; and amending WAC 220-24-040.

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: Harvestable quota of salmon for the troll fleet exists in Areas 1, 2, 3, and 4, and sufficient harvest remains to allow for a three hundred Chinook possession limit in all areas. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 11, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-24-04000M All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to deliver or land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 open: August 15 through August 23, 2016.

(2) Landing and possession limits:

(a) 300 Chinook per vessel per entire open period.

(b) No vessel may possess, land or deliver more than 300 Chinook during the open period.

(3) Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed. Grays Harbor Control Zone is closed.

(4) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon, and it is unlawful to possess chum salmon north of Cape Alava, Washington in August.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch to Ports within salmon management catch areas 1, 2, 3 or 4, including the Ports of Chinook and Ilwaco. Fishers must complete a Washington State Fish Receiving ticket within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(a) For the purposes of this section, the term "deliver" means arrival at a port.

(b) For the purposes of this section, the term "land" means the transfer of fish from a fishing vessel or the initia-



tion of a fish receiving ticket to include fisher's signature, species, number of fish and pounds of fish.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(8) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) The Grays Harbor Control Zone is defined as the area within and east of a line drawn from the Westport Lighthouse (46°53'18" N. lat., 124°07'01" W. long.) to Buoy #2 (46°52'42" N. lat., 124°12'42" W. long.) to Buoy #3 (46°55'00" N. lat., 124°14'48" W. long.) to the Grays Harbor north jetty (46°55'36" N. lat., 124°10'51" W. long.).

(10) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(11) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(12) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to [rollfishtickets@dfw.wa.gov](mailto:rollfishtickets@dfw.wa.gov). Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

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

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000L All-citizen commercial salmon troll.  
(16-198)

## WSR 16-17-054 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-208—Filed August 11, 2016, 4:22 p.m., effective August 12, 2016]

Effective Date of Rule: August 12, 2016.

Purpose: Amend Puget Sound saltwater recreational fishing rules.

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

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

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

Reasons for this Finding: Preliminary estimates indicate that sufficient quota remains to increase the hatchery Chinook daily limit while ensuring compliance with conservation objectives and agreed-to management plans. Increasing the daily limit will provide for additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 11, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 232-28-62100H Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective August 12, 2016, until further notice:

(1) **Catch Record Card Area 5:** Immediately through August 15: release coho. August 16 until further notice: closed.

(2) **Catch Record Card Area 6:** Immediately through August 15: release coho. August 16 until further notice: closed.

(3) **Catch Record Card Area 7:** Immediately until further notice: release coho.

(4) **Catch Record Card Area 8-1:** Closed.

(5) **Catch Record Card Area 8-2:** Closed, except in Tulalip Bay. Tulalip Bay: release coho and wild Chinook.

(6) **Catch Record Card Area 9:** Closed to fishing for salmon through August 15, except Edmonds Public Fishing Pier: Daily limit of 2 salmon. No more than 1 may be a Chinook. Release coho. Release chum through August 15, 2016.

(7) **Catch Record Card Area 10 (excluding Sinclair Inlet and year-round piers)** Immediately through August 15: Daily limit of 2 salmon; release coho, chum and wild Chinook. August 16 until further notice: closed. Sinclair Inlet: Immediately until further notice: 3 salmon limit; release wild Chinook and wild coho.

(8) **Catch Record Card Area 11:** Immediately through August 31: release coho. September 1 until further notice: closed.

(9) **Catch Record Card Area 12 (north of Ayock Point):** Immediately through August 15: closed. August 16 until further notice: 4 salmon limit; release chum and Chinook.

(10) **Catch Record Card Area 12 (south of Ayock Point):** Immediately until further notice: 4 hatchery Chinook may be harvested as part of the daily limit.

(11) **Catch Record Card Area 13:** Immediately through August 31: release coho. September 1 until further notice: closed.

(12) **Year-round Piers (Edmonds Public Fishing Pier, Elliott Bay Fishing Pier at Terminal 86, Seacrest Pier, Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier, Point Defiance Boathouse Dock, Fox Island Public Fishing Pier):** Immediately through August 31: release coho. September 1 until further notice: closed.

(13) **Year-round Piers located in Sinclair Inlet (Waterman Pier, Bremerton Boardwalk, Illahee State Park):** release wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 12, 2016:

WAC 232-28-62100G Puget Sound salmon—Saltwater seasons and daily limits. (16-191)

**WSR 16-17-061**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
 (Washington Apple Health)

[Filed August 15, 2016, 9:57 a.m., effective August 15, 2016, 9:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending this rule to clarify that adoption support and foster care alumni can opt out of the apple health foster care program for any reason.

Citation of Existing Rules Affected by this Order: Amending WAC 182-538-150 Apple health foster care program.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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: WAC 182-538-150 (3)(b) incorrectly cites to WAC 182-538-130. The rule must clarify that adoption support and foster care alumni can opt out of the apple health foster care program for any reason. This emergency filing is necessary while the agency is completing the permanent rule-making process. The agency filed the proposed rules under WSR 16-12-089 and held a public hearing on July 5, 2016. The agency intends to adopt the permanent rule shortly.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: August 15, 2016.

Wendy Barcus  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

**WAC 182-538-150 Apple health foster care program.**

(1) Unless otherwise stated in this section, all of the provisions of chapter 182-538 WAC apply to apple health foster care (AHFC).

(2) The following sections of chapter 182-538 WAC do not apply to AHFC:

(a) WAC 182-538-068;

- (b) WAC 182-538-071;
- (c) WAC 182-538-096; and
- (d) WAC 182-538-111.

(3) Enrollment in AHFC is voluntary for eligible individuals. The agency will enroll eligible individuals in the single MCO that serves children and youth in foster care and adoption support, and young adult alumni of the foster care system.

(a) The agency will not enroll a client in AHFC or will end an enrollee's enrollment in AHFC when the client has, or becomes eligible for, TRICARE or any other third-party health care coverage that would:

- (i) Require the agency to either exempt the client from enrollment in managed care; or
- (ii) End the enrollee's enrollment in managed care.

(b) An AHFC enrollee may request exemption from enrollment or termination of enrollment in AHFC without cause if the client is in the adoption support or young adult alumni programs (~~(under)~~) WAC 182-538-130 does not apply to these requests.

(4) In addition to the scope of medical care services in WAC 182-538-095, AHFC coordinates health care services for enrollees with the department of social and health services community mental health system and other health care systems as needed.

(5) The agency sends written information about covered services when the individual becomes eligible to enroll in AHFC and at any time there is a change in covered services. In addition, the agency requires MCOs to provide new enrollees with written information about:

- (a) Covered services;
- (b) The right to grievances and appeals through the MCO; and
- (c) Hearings through the agency.

### WSR 16-17-067

#### EMERGENCY RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 16, 2016, 9:48 a.m., effective August 16, 2016, 9:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These rules will support ESHB 2746 and the following decision by the Centers for Medicare and Medicaid Services (CMS):

"CMS has approved an amendment that includes Wellness Education to the Individual and Family Services 1915(c) waiver. The Individual and Families Services (IFS) Waiver provides home and community-based services targeted to individuals as an alternative to placement in an Intermediate Care Facility for individuals with Intellectual Disabilities. Wellness Education is meant to provide wellness information to IFS Waiver participants to assist them in achieving goals identified during their person-centered planning process."

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-2280 and 388-845-2285.

Statutory Authority for Adoption: RCW 71A.12.030, 34.05.350 (1)(b).

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

Reasons for this Finding: ESHB 2746 requires the department of social and health services to refinance medicare personal care services under the community first choice (CFC) option and allows for optional services to be included within the benefit package. The wellness education program provides an access point to CFC services for many clients that would otherwise not qualify. This is consistent with the intent of HR [ESHB] 2746.

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 2, Repealed 0.

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

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

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

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

Date Adopted: August 11, 2016.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

#### WAC 388-845-2280 What is wellness education?

Wellness education provides you with monthly individualized printed educational materials designed to assist you in managing health related issues and achieving wellness goals identified in your person-centered service plan that address your health and safety issues. Individualized educational materials are developed by the state, other content providers and the contracted wellness education provider. This service is available on the Basic Plus, individual and family services, and Core Waivers.

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

**WAC 388-845-2285 Are there limits to wellness education?** Wellness education is a once a month service. In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210. The dollar amount for your individual and family services (IFS) waiver annual allocation defined in WAC 388-845-0230 limits the amount of service you may receive.

**WSR 16-17-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-210—Filed August 16, 2016, 2:03 p.m., effective August 22, 2016]

Effective Date of Rule: August 22, 2016.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100R; and amending WAC 220-52-071.

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

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

Reasons for this Finding: This emergency rule is needed to close sea cucumber harvest in Districts 2E and 5 because we are approaching quota limits. Harvestable surpluses of sea cucumbers exist in the districts specified to allow for commercial 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 16, 2016.

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

NEW SECTION

**WAC 220-52-07100S Sea cucumbers** Notwithstanding the provisions of WAC 220-52-071, effective August 22, 2016, it is unlawful to take or possess sea cucumbers taken for commercial purposes except in the marine fish-shellfish catch reporting areas provided for in this section:

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

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following areas of Sea Cucumber District 2 Monday through Friday of each week: 29, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 2,500 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 2,500 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 22, 2016:

WAC 220-52-07100R Sea cucumbers. (16-189)

**WSR 16-17-076**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-209—Filed August 17, 2016, 11:20 a.m., effective September 1, 2016]

Effective Date of Rule: September 1, 2016.

Purpose: Amend recreational fishing rules for the Snake River.

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

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

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

Reasons for this Finding: The 2016 Columbia River forecasted return of upriver bright adults is 593,800 with a significant portion of these fish expected to return to the Snake River. Significant steelhead fisheries also occur in the area and some hatchery fall Chinook are expected to be caught during steelhead fishing. Retention of hatchery fall Chinook is not expected to increase impacts to Endangered Species Act listed wild fall Chinook. Allowing retention of hatchery Chinook will provide additional angling opportunity. There is significant time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 17, 2016.

Christy Vassar  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19500S Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195,

(1) **Snake River** - Effective September 1 through October 31, 2016, open for salmon in waters of the Columbia River from the railroad bridge between Burbank and Kennewick upstream 2.1 miles to the first power line crossing upstream of the navigation light on the point of Sacajawea State Park (Snake River Confluence Protection Area) and on the Snake River from the mouth to the Oregon State line.

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

(b) Anglers must cease fishing for salmon and steelhead for the day once they have retained 3 hatchery steelhead regardless of whether the salmon daily limit has been retained.

(c) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

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

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

#### REPEALER

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

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

**WSR 16-17-080**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-211—Filed August 17, 2016, 1:27 p.m., effective August 22, 2016, 6:00 a.m.]

Effective Date of Rule: August 22, 2016, 6:00 a.m.

Purpose: Columbia River seine fishery emerging commercial fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-88-07000F and 220-88-08000C.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 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 establishes an emerging commercial fishery with limited participants using beach or purse seine gear in the Columbia River. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3620 which includes guiding principles and a progressive series of actions to improve the management of salmon in the Columbia River Basin. The fisheries outlined here are part of a series of actions meant to be progressively implemented in 2013-2016 during the transitional period of the policy. This is the third year that a fishery allowing seine gear in the Columbia River has occurred, and is meant to inform fishery managers in how best to implement such fisheries. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement, commission guidance and the fall Chinook allocation agreement developed through the North of Falcon process. The regulation is consistent with compact action of August 16, 2016. There is insufficient time to adopt permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act (ESA). On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: August 17, 2016.

Christy Vassar  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-88-07000G Columbia River seine emerging commercial fishery—Season, area, and gear requirements.** Notwithstanding the provisions of Chapter 220-88 WAC, 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, with beach or purse seine gear except during the times and conditions listed below:

**Season:**

(a) Open hours are 6:00 a.m. to 4:00 p.m. through September 11; and 7:00 a.m. to 5:00 p.m. thereafter:

(b) Open days are:

(i) Monday August 22 and Wednesday August 24, 2016

(ii) Monday August 29 and Wednesday August 31, 2016

(iii) Tuesday, Wednesday, Thursday, and Friday September 6-9, 2016

(iv) Monday, Tuesday, Wednesday, Thursday, and Friday September 12-16, 2016

(v) Monday September 19 and Wednesday September 21, 2016

(vi) Monday September 26 and Wednesday September 28, 2016

**(1) Open area: SMCRA 1A-1C.** Beach seining restricted to 1B and 1C. Purse seining restricted to Zones 1A and 1C. The deadline at the upper end of Zone 3 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.

**(2) Sanctuaries:** Elokom-B, Cowlitz, Kalama-B and Select Area commercial fishing sites.

**(3) Gear type:** Beach seines or purse seines only. Only one seine net per primary vessel.

(a) Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure).

(b) Net material to consist of 3-strand nylon; twine size  $\geq$ #12.

(c) Seines may include a bunt of 1.0-2.0 inch knotless mesh.

(d) Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet)

(e) Seine and lead lines may not be connected. Lead nets must be retrieved daily.

(f) No restrictions on corkline, leadline or use of stringers and slackers.

(g) A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline.

(h) Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net.

(i) Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size  $\geq$ #12,  $\leq$ 3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size  $\geq$ 14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

#### NEW SECTION

**WAC 220-88-08000D Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements.** Notwithstanding the provisions of Chapter 220-88 WAC:

**(1) Allowable possession and sales:** Subject to IFQs as defined on individual permits. Allowable sales limited to adipose or left ventral fin-clipped Chinook, adipose-clipped Coho, pink, and sockeye salmon and shad. Retained Chinook and Coho must have a healed scar at the location of the clipped fin. All legal salmon caught must be kept and sold.

**(2) Handling of catch:** Hand sorting or use of a knotless dip net for sorting is required. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

**(3) Sort time not to exceed 75 minutes.**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(4) **Observer Program** - Agency observers must be present during all fishing operations

(5) **24-hour quick-report required pursuant to WAC 220-69-240.**

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective 6:00 a.m. August 22, 2016:

WAC 220-88-07000F Columbia River seine emerging commercial fishery—Season, area, and gear requirements. (16-132)

WAC 220-88-08000C Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (16-132)

**WSR 16-17-085**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-212—Filed August 17, 2016, 2:50 p.m., effective August 19, 2016, 9:00 p.m.]

Effective Date of Rule: August 19, 2016, 9:00 p.m.

Purpose: Amend recreational fishing rules for the south fork Nooksack River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-190.

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

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

Reasons for this Finding: To meet conservation needs for hatchery origin spring Chinook. Chinook from the recovery program at Skookum Hatchery in south fork Nooksack are holding in deep pools below the hatchery making them susceptible to prespawning mortality resulting from human activities including fishing. These fish are part of the recovery program for these Endangered Species Act listed Chinook, therefore it is important that as many survive to spawn as possible. This closure will allow fish to hold in the river until the Chinook are able to move into the hatchery or move upstream to spawn. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 17, 2016.

Christy Vassar  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19000L Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective 9:00 p.m. August 19, 2016, until further notice, it is unlawful to fish in waters of the South Fork Nooksack River from the Saxon Road Bridge to Skookum Creek.

**WSR 16-17-088**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-213—Filed August 17, 2016, 4:28 p.m., effective August 20, 2016]

Effective Date of Rule: August 20, 2016.

Purpose: Amend Puget Sound saltwater recreational fishing rules.

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

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

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

Reasons for this Finding: Preliminary estimates indicate that legal-sized encounters of Chinook in Area 11 have exceeded the preseason expectations without modification to the fishery. The salmon fishery is being closed to control impacts on stocks of concern and ensure compliance with conservation objectives and agreed-to management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 17, 2016.

Christy Vassar  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 232-28-62100I Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective August 20, 2016, until further notice:

- (1) **Catch Record Card Area 5:** Closed.
- (2) **Catch Record Card Area 6:** Closed.
- (3) **Catch Record Card Area 7:** Immediately until further notice: release coho.
- (4) **Catch Record Card Area 8-1:** Closed.
- (5) **Catch Record Card Area 8-2:** Closed, except in Tulalip Bay. Tulalip Bay: release coho and wild Chinook.
- (6) **Catch Record Card Area 9:** Closed, except Edmonds Public Fishing Pier: Daily limit of 2 salmon. No more than 1 may be a Chinook. Release coho.
- (7) **Catch Record Card Area 10 (excluding Sinclair Inlet and year-round piers)** August 16 until further notice: closed. Sinclair Inlet: Immediately until further notice: 3 salmon limit; release wild Chinook and wild coho.
- (8) **Catch Record Card Area 11:** Closed, except Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier, and Point Defiance Boathouse Dock, open through August 31: release coho.
- (9) **Catch Record Card Area 12 (north of Ayock Point):** Immediately until further notice: 4 salmon limit; release chum and Chinook.
- (10) **Catch Record Card Area 12 (south of Ayock Point):** Immediately until further notice: 4 hatchery Chinook may be harvested as part of the daily limit.
- (11) **Catch Record Card Area 13:** Immediately through August 31: release coho. September 1 until further notice: closed.
- (12) **Year-round Piers (Edmonds Public Fishing Pier, Elliott Bay Fishing Pier at Terminal 86, Seacrest Pier, Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier, Point Defiance Boathouse Dock, Fox Island Public Fishing Pier):** Immediately through August 31: release coho. September 1 until further notice: closed.
- (13) **Year-round Piers located in Sinclair Inlet (Waterman Pier, Bremerton Boardwalk, Illahee State Park):** release wild coho.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective August 20, 2016:

WAC 232-28-62100H Puget Sound salmon—Saltwater seasons and daily limits. (16-208)

#### **WSR 16-17-096**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Order 16-214—Filed August 18, 2016, 1:39 p.m., effective August 18, 2016, 1:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab rules.

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

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

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

Reasons for this Finding: The weekly landing limit and period is necessary to mitigate handling mortality from sorting soft shelled crab and provide for an orderly fishery and is in conformity with the coastal Dungeness crab summer fishery management plan. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 18, 2016.

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



NEW SECTION

**WAC 220-52-04000U Coastal crab fishery—Weekly trip limits** Notwithstanding the provisions of WAC 220-52-040:

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

August 21 - August 27, 2016  
 August 28 - September 3, 2016  
 September 4 - September 10, 2016  
 September 11 - September 15, 2016

(2) Any crab taken prior to August 21, 2016, and not landed before 11:59 p.m. August 20, 2016, becomes part of the August 21 - August 27, 2016 accounting period catch.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000T Coastal crab fishery—Weekly trip limits. (16-161)

**WSR 16-17-098****EMERGENCY RULES****HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed August 18, 2016, 2:26 p.m., effective August 18, 2016, 2:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending this rule so coverage is consistent for new and renewing enrollees in TAKE CHARGE. Coverage is for the duration of the waiver.

Citation of Existing Rules Affected by this Order: Amending WAC 182-532-720.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This emergency rule is necessary to assure that clients in the TAKE CHARGE program understand that coverage under this program is only for the duration of the waiver. The agency filed the preproposal statement of inquiry for permanent rule making under WSR 16-02-023 and is currently working through the permanent rule-making process. Since the last emergency filing under WSR 16-10-012, the agency filed the proposed rule making for the permanent rules under WSR 16-17-097. A public hearing is scheduled for September 27, 2016.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: August 18, 2016.

Wendy Barcus  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-02-056, filed 1/5/15, effective 2/5/15)

**WAC 182-532-720 TAKE CHARGE program—Eligibility.** (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in WAC 182-503-0530, and give proof of citizenship or qualified alien status and identity upon request from the medicaid agency;

(b) Provide a valid Social Security number (SSN);

(c) Be a resident of the state of Washington as described in WAC 182-503-0520;

(d) Have an income at or below two hundred sixty percent of the federal poverty level as described in WAC 182-505-0100;

(e) Need family planning services;

(f) Have applied for categorically needy coverage, unless the applicant:

(i) Is a domestic violence victim who is covered under the alleged perpetrator's health insurance;

(ii) Is under eighteen years of age and is seeking confidential services; or

(iii) Has an income between one hundred fifty percent and two hundred sixty percent (inclusive) of the federal poverty level.

(g) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(h) Not be covered currently through another Washington apple health program for family planning. If categorically needy coverage is approved for a TAKE CHARGE recipient, the individual will be enrolled in the categorically needy program.

(2) An applicant who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) An applicant who has concurrent coverage under a creditable health insurance policy as defined in WAC 182-12-109 is not eligible for TAKE CHARGE unless the applicant is seeking confidential services and is either under nineteen

years old or is a domestic violence victim who is covered under the perpetrator's insurance.

(4) A client is authorized for TAKE CHARGE coverage for one year from the date the medicaid agency determines eligibility, or for the duration of the waiver, whichever is shorter. Upon reapplication for TAKE CHARGE by the client, the medicaid agency may renew the coverage for an additional period of up to one year, or for the duration of the waiver, whichever is shorter.

**WSR 16-17-106**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-215—Filed August 22, 2016, 9:33 a.m., effective August 22, 2016, 9:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Big Quilcene River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000M; and amending WAC 220-310-190.

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

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

Reasons for this Finding: The antisnagging rule has been implemented by this emergency rule for the Big Quilcene River in order to improve enforcement efforts and reduce impacts of hooking mortality of Endangered Species Act-listed summer chum. The antisnagging emergency rule is intended to replace the permanent rule requiring that only coho that are hooked inside the mouth may be retained. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 22, 2016.

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

NEW SECTION

**WAC 220-310-19000M Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective immediately through October 31, in waters of the Big Quilcene River from Rodgers Street to the Highway 101 Bridge: the hooked inside the mouth requirement for coho is hereby rescinded and the anti-snagging rule applies.

REPEALER

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

WAC 220-310-19000M Freshwater exceptions to statewide rules—Puget Sound.

**WSR 16-17-107**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed August 22, 2016, 9:44 a.m., effective August 24, 2016]

Effective Date of Rule: August 24, 2016.

Purpose: The department is amending WAC 388-97-0001 Definitions, related to the passage of SB [SSB] 5600 in 2015. The department is also amending WAC 388-97-1080 Nursing services and creating new WAC 388-97-1090 Direct care hours, related to the passage of SHB 1274 in 2015 and SHB 2678 in 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 388-97-0001 and 388-97-1080.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Other Authority: 42 C.F.R. 483.

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

Reasons for this Finding: Section 7 (2)(b) of SHB 1274 states "The department shall establish in rule by January 1, 2016, a system of financial penalties for facilities out of compliance with minimum staffing standards." A CR-101 was filed on July 16, 2015, to start the rule-making process. However, by legislative mandate, a stakeholder group was convened to provide opportunity to discuss the bill and rule language and this delayed the development of the rules. A CR-103E was filed on December 30, 2015, to implement the rules according to the requirements of SHB 1274. During the 2016 legislative session, HB 2678 was introduced to revise requirements set forth in SHB 1274. As a result, the filing of a CR-102 was further delayed, and the first CR-103E filed on December 30, 2015, expired. A second CR-103E was filed on April 26, 2016, to allow time to incorporate the language changes of SHB 2678. The CR-102 was filed on May 2, 2016, with a hearing held on June 21, 2016. Due to the large volume of comments from stakeholders and the need to make

changes to the proposed rules, the CR-103P will not be effective prior to the expiration of the second CR-103E. As a result, this third CR-103E is required.

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 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: August 3, 2016.

Patricia K. Lashway  
Acting Secretary

**AMENDATORY SECTION** (Amending WSR 14-14-027, filed 6/24/14, effective 7/25/14)

**WAC 388-97-0001 Definitions. "Abandonment"** means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(1) **"Mental abuse"** means ~~((any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating,))~~ a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding ~~((, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements)).~~

(3) **"Sexual abuse"** means any form of nonconsensual sexual ~~((contact))~~ conduct, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harass-

ment. Sexual ~~((contact))~~ conduct may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual ~~((contact))~~ conduct between a staff person and a resident, whether or not it is consensual.

(4) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a ~~((resident))~~ vulnerable adult causing the ~~((resident))~~ vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

**(5) "Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

**"Administrative law judge (ALJ)"** means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

**"Administrator"** means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

**"Advanced registered nurse practitioner (ARNP)"** means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

**"Applicant"** means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

**"ASHRAE"** means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

**"Attending physician"** means the doctor responsible for a particular individual's total medical care.

**"Berm"** means a bank of earth piled against a wall.

**"Chemical restraint"** means ~~((a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms))~~ the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

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

**"Civil fine"** is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

**"Condition on a license"** means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

**"Consent"** means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

**"Deficiency"** is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

**"Deficiency citation"** or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

**"Deficient facility practice"** or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

**"Dementia care"** means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

**"Denial of payment for new admissions"** is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

**"Department"** means the state department of social and health services (DSHS).

**"Department on-site monitoring"** means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

**"Dietitian"** means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

**"Direct care employee"** is a registered nurse, licensed practical nurse, certified nursing assistant, director of nursing, nurse with administrative duties, medication assistant, nursing assistant in training, or geriatric behavioral health worker.

**"Directly supervising"** means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments and other direct care of residents, and provide oversight of supervised staff.

**"Disclosure statement"** means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

**"Drug"** means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

**"Drug facility"** means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

**"Emergency closure"** is an order by the department to immediately close a nursing home.

**"Emergency transfer"** means immediate transfer of residents from a nursing home to safe settings.

**"Entity"** means any type of firm, partnership, corporation, company, association, or joint stock association.

**"Essential community provider"** has the same meaning as this term is defined in RCW 74.46.020.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020 ~~((6))~~(7).

**"Habilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

**"Highest practicable physical, mental, and psychosocial well-being"** means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with

all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

**"Informal department review"** is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

**"Inspection"** or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

**"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)"** means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

**"Large nonessential community providers"** has the same meaning as this term is defined in RCW 74.46.020.

**"License revocation"** is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

**"License suspension"** is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

**"Licensee"** means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

**"Licensed practical nurse"** means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

**"Mandated reporter"** as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of assisted living ~~((facility))~~ facilities, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

**"Mechanical restraint"** means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(1) Medically authorized, as required; and

(2) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities.

**"Misappropriation of resident property"** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

**"NFPA"** means National Fire Protection Association, Inc.

**"Neglect":**

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means:

~~((a))~~ (a) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(b) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

**"Noncompliance"** means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

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

**"Nursing facility (NF)"** or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

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

**"Officer"** means an individual serving as an officer of a corporation.

**"Owner of five percent or more of the assets of a nursing home"** means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

**"Partner"** means an individual in a partnership owning or operating a nursing home.

**"Permanent restraining order"** means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

**"Person"** means any individual, firm, partnership, corporation, company, association or joint stock association.

**"Pharmacist"** means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

**"Pharmacy"** means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

**"Physical restraint"** ~~((means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of move-~~

ment or access to the resident's body)) means the application of physical force without the use of any device for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include: (a) briefly holding without undue force a vulnerable adult in order to calm or comfort him or her; or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

"**Physician's assistant (PA)**" means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

"**Plan of correction**" is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

"**Reasonable accommodation**" and "**reasonably accommodate**" has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"**Receivership**" is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

"**Recurring deficiency**" means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

"**Registered nurse**" means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

"**Rehabilitative services**" means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

"**Resident**" generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

"**Resident care unit**" means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

"**Respiratory isolation**" is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

"**Siphon jet clinic service sink**" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

"**Skilled nursing facility (SNF)**" or "**medicare-certified skilled nursing facility**" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

"**Small nonessential community providers**" has the same meaning as this term is defined in RCW 74.46.020.

"**Social/therapeutic leave**" means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

"**Staff work station**" means a location at which nursing and other staff perform charting and related activities throughout the day.

"**Stop placement**" or "**stop placement order**" is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

"**Substantial compliance**" means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicaid certified facility, no deficiencies higher than a scope and severity "C."

"**Surrogate decision maker**" means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

"**Survey**" means the same as "**inspection**" as defined in this section.

"**Temporary manager**" means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"**Temporary restraining order**" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"**Termination**" means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

"**Toilet room**" means a room containing at least one toilet fixture.

"**Uncorrected deficiency**" is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

"**Violation**" means the same as "**deficiency**" as defined in this section.

"**Volunteer**" means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

"**Vulnerable adult**" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility(~~(, including any assisted living facility)~~); or
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from an individual provider; or
- (7) ~~((With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW))~~  
Who self directs his or her own care and receives services from a personal aide under chapter 74.39((.050)) RCW.

"**Whistle blower**" means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-1080 Nursing services.** (1) The nursing home must ensure that a sufficient number of qualified nursing personnel are available on a twenty-four hour basis seven days per week to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care.

(2) The nursing home must:

- (a) Designate a registered nurse or licensed practical nurse to serve as charge nurse, who is accountable for nursing services on each tour of duty; and
- (b) Have a full time director of nursing service who is a registered nurse.

(3) The nursing home must have(~~(:))~~)

~~((a) A) a registered nurse on duty directly supervising resident care (a minimum of sixteen hours per day, seven days per week;)) as required in RCW 74.42.360 (3) and (4). ((and~~

~~(b) A registered nurse or licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week. "Directly supervising" means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments and other direct care of residents; and oversight of supervised staff.))~~

(4) The nursing home must ensure that staff respond to each resident's requests for assistance in a manner which promptly meets the quality of life and quality of care needs of all the residents.

(5) The director of nursing services is responsible for:

- (a) Coordinating the plan of care for each resident;
- (b) Ensuring that registered nurses and licensed practical nurses comply with chapter 18.79 RCW; and

(c) Ensuring that the nursing care provided is based on the nursing process in accordance with nationally recognized and accepted standards of professional nursing practice.

#### NEW SECTION

**WAC 388-97-1090 Direct care hours** (1) Each nursing facility must provide a minimum of 3.4 hours of direct care per resident day (HRD). Direct care includes only care provided by direct care employees, either employed by the facility or contracted by the facility from an outside source.

(2) Each nursing facility shall file reports with the department as follows:

(a) The reports shall be made on forms specified by the department, showing the hours of direct care provided, and the resident census information, for each month of the quarter. Where feasible, the department may use existing forms of the federal centers for medicare and medicaid services for the reporting of direct care hours and resident census.

(b) The reports shall be submitted within forty five days after the end of each calendar quarter, and shall be filed electronically.

(c) Unless the nursing facility reports otherwise, it will be presumed that all hours worked by direct care employees at the facility have been spent providing direct care.

(d) If any hours worked by direct care employees have not been spent providing direct care, the facility shall adjust its report to reflect that.

(3) Compliance with the minimum staffing standard shall be measured as follows:

(a) The direct care hours provided at the facility for each quarter shall be divided by the total resident days at the facility for that quarter to calculate the hours of direct care per resident day provided by the facility.

(b) The department may use census and payroll data from facilities to perform enforcement audits.

(c) The department shall monitor facilities' census information, reported staff hours, and payroll data to determine whether HRD figures are relatively constant throughout a quarter or are being increased at the end of the quarter through unusual spending on direct care.

(4) A nursing facility that fails to meet the minimum staffing requirement of 3.4 hours of direct care per resident day for any quarter is subject to a fine. The department will determine the amount of the fine as follows:

(a) The fine shall be based on the total cost the facility would have incurred had it complied with the 3.4 HRD requirement.

(b) The department will use a formula that calculates a fine based on the cost of certified nurse aid wages and benefits for the missing staff hours.

(c) If the facility believes that application of the standard in subsection (b) to its situation is inequitable, it may explain its position to the department and request consideration of an alternative method of calculating the fine. The department may grant the facility's request at its sole discretion, without right of appeal or review.

(d) The fine will be one and a half times the additional amount it would have cost the facility to provide direct care at the 3.4 HRD standard for a facility's first violation, and two

times the additional amount for each subsequent violation by the facility.

(e) After a facility has been free of violations of the 3.4 HRD requirement for four years its status will be reset and any subsequent violation will be treated as an initial violation.

(5) If a non-compliant facility believes that it made a good-faith effort to meet the minimum staffing requirement and asks that the penalty not be imposed, the department may in its sole discretion waive the penalty. No party shall have a right to appeal or review of the department's decision to enforce or waive a penalty.

(6) If a facility's fine is waived under section (5), its non-compliance with the 3.4 HRD requirement shall not count as a violation for determining whether a future violation is a first violation or a subsequent violation under section (4)(d) and shall not count as a violation for the purposes of resetting a facility's status under section (4)(e).

(7) The amount of money the facility would have been required to spend to reach 3.4 HRD shall be treated as a direct care cost during the annual rate settlement process. The portion of the fine representing the additional one-half or one times that amount is a penalty, and will not be added to the actual costs of the facility in the settlement process.

(8) The department will monitor compliance with the 3.4 HRD minimum staffing requirement for the quarter beginning July 1, 2016, but will not impose any penalties on facilities that do not comply during that quarter. The department instead will notify non-complying facilities what their penalty would otherwise have been, and will require those facilities to submit a written plan for correcting the deficiency. Fines will begin to be imposed for the quarter beginning October 1, 2016. Noncompliance with the 3.4 HRD requirement during the quarter beginning July 1, 2016 shall not count as a first violation for fine calculation purposes under section (4)(d).

(9) Payment of the penalty provided in subsection must be made by check. Penalty checks will be deposited into the nursing facility quality enhancement account in the custody of the state treasurer. The department's secretary, or the secretary's designee, may authorize expenditures from the account. Such expenditures may only be for: technical assistance to nursing facilities, specialized training for nursing facilities, or an increase to the quality enhancement component of the daily medicaid rate provided by RCW 74.46.581.

**WSR 16-17-114**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Pharmacy)

[Filed August 22, 2016, 3:48 p.m., effective August 22, 2016, 3:48 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-869-105 Continuity of care refills in proclaimed emergencies, this filing extends emergency rules filed on May 4, 2016, as WSR 16-11-002, while the commission completes permanent rule making to allow temporary prescription refills of legend drugs and certain controlled

substances for patients displaced from their homes or usual pharmacies during an event resulting in a governor's emergency proclamation.

Statutory Authority for Adoption: RCW 18.64.005.

Other Authority: RCW 18.64.005.

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: Governor Inslee on June 25, 2015, issued State of Emergency Proclamation 15-11 for all thirty-nine counties of the state. The proclamation notes that the wildfire conditions anticipated to continue into autumn 2015 pose "the threat to life and property from wildfires (that) is significant and may cause extensive damage to homes, businesses, public facilities, resources, infrastructure and utilities, impacting the life and health of our citizens throughout the state; this threat may affect life, health, property, or the public peace, and is a public disaster demanding immediate action ...."

On August 18, 2015, there were one thousand two hundred active wildfires in Washington state, causing entire towns to be evacuated. Wildfires have destroyed homes and businesses in several Washington state counties, causing residents to live in emergency shelters or other temporary arrangements, sometimes leaving prescription medications or prescription records behind. In some cases the patient's prescriber or community pharmacy became inaccessible due to wildfire evacuations or property destruction.

Although the 2015 wildfire season has ended, the emergency rule must remain in effect while the pharmacy quality assurance commission completes permanent rule making in case the state experiences another major disaster or event that threatens patients' access to their prescription medications.

The rule allows a licensed pharmacist to legally provide a temporary prescription refill during a governor-proclaimed emergency when the patient's pharmacy access is disrupted.

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

The commission filed a notice of intent to adopt the emergency rule as a permanent rule (preproposal statement of inquiry) on December 21, 2015, WSR 16-01-156. The CR-102 has been filed with the code revisers office, WSR 16-16-012, and a public hearing is scheduled for September 29, 2016.

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

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

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



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

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

Date Adopted: August 22, 2016.

Tim Lynch  
Commission Chair

#### NEW SECTION

**WAC 246-869-105 Continuity of care refills in proclaimed emergencies.** Notwithstanding WAC 246-869-100 (2)(f), when the governor issues an emergency proclamation for an event which prevents continuity of health care for persons and animals because their prescribed medications are no longer available to them due to the emergency event, pharmacists and pharmacies may provide emergency prescription supplies for medications during the period of the proclaimed emergency as provided below:

(1) An initial supply of up to thirty days of current prescriptions for legend drug (noncontrolled) medications or seven-day supply of current prescriptions for controlled substance medications in Schedules III, IV, and V may be provided to patients under the following conditions:

(a) Presentation of a valid prescription container complete with legible label indicating there are remaining refills, or confirmation of the prescribed medication and available refills by review of the patient's current medical records or pharmacy records; or

(b) If the prescription is expired and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two hour supply of the prescribed medication as described in WAC 246-869-100 (2)(f).

(2) For each medication dispensed under this section, a pharmacist shall:

(a) Document the dispensing as a prescription, noting where the information from subsection (1)(a) of this section was obtained, whether from the prescription container, the patient's prescriber or from the pharmacy records;

(b) Inform the patient's provider and the pharmacy at which the patient obtains his or her medications of the dispensing as soon as possible following the emergency dispensing;

(c) Mark the face of the prescription as an "emergency" prescription.

(3) Nothing in this rule modifies insurers' requirements for coverage and payment for prescribed medications.

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

There are no changes from the previous emergency rule filed April 21, 2016, under WSR 16-10-006.

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

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

Other Authority: RCW 34.05.350, 82.04.460(2).

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

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

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

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

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

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

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

Date Adopted: August 23, 2016.

Kevin Dixon  
Rules Coordinator

#### **WSR 16-17-122**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF REVENUE**

[Filed August 23, 2016, 9:09 a.m., effective August 23, 2016, 9:09 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

(a) Effective June 1, 2010, (~~section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's~~) Washing-

ton changed its method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

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

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

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

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

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

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

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

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

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

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

**(2) Apportionment ((and allocation)).**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. ((Any other)) Apportionable income that is not taxable under RCW 82.04.290 must be apportioned pursuant to WAC 458-20-19402((;)) Single factor receipts apportionment—Generally or WAC 458-20-19403((;)) Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401((;)) Minimum nexus thresholds for apportionable activities,

including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not ((includable)) from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

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

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

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

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

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

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

((;)) (f) If the ((allocation and)) apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) "Debit card" means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

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

~~((g)) (h) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-~~

law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((q))~~ (s) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

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

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

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

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

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

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

**(4) Receipts factor.**

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

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

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

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

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

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

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

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection ~~((4))~~ and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans not secured by real property.

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

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

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

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

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

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

(h) Receipts from merchant discount.

(i) If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numera-

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

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

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

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

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

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

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

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

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

(j) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest ~~((and fees or penalties in the nature of interest from))~~, fees, and penalties imposed in connection with loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property

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

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

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

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

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

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

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

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

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

business of the taxpayer within this state and the denominator of which is the average value of all such assets.

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

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

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

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

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

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

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the

arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

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

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

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

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

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after ~~((June 1, 2014))~~ January 1, 2016.

**WSR 16-17-138**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-217—Filed August 23, 2016, 4:00 p.m., effective August 23, 2016, 4:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100T; and amending WAC 220-52-051.

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

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

Reasons for this Finding: The 2016 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule reopens the pot fishery season for spot shrimp in Shrimp Management Areas 1A and 1B, with reduced weekly limits. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 23, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-52-05100U Puget Sound shrimp pot and trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

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

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

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

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

(b) Effective immediately, further notice it, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, with the following exceptions:

(i) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to

exceed 300 pounds per week in Shrimp Management Area 1A or to exceed 300 pounds per week Shrimp Management Area 1B.

(c) The spot shrimp catch accounting week is Wednesday through Tuesday.

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

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

(2) Shrimp trawl gear:

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

(b) Those portions of Catch Areas 20B, 21A and 22A within SMA 1B are open.

(c) Catch Area 20A is open.

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

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

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100T Puget Sound shrimp pot and beam trawl fishery—Season. (16-203)

**WSR 16-17-140  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-218—Filed August 23, 2016, 4:28 p.m., effective August 23, 2016, 4:28 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-42800Q and 220-47-42800R; and amending WAC 220-47-428.

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: Harvestable surplus of Chinook salmon is available in the Hoodspport Hatchery Zone for a commercial beach seine opening and sufficient harvest remains to allow for a one hundred ninety Chinook possession limit. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 23, 2016.

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

## NEW SECTION

**WAC 220-47-42800R Beach seine—Open periods.** Notwithstanding the provisions of WAC 220-47-428, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the areas and open periods indicated below. Unless otherwise amended, all permanent rules remain in effect.

(1) That portion of Area 12C within 2,000 feet of the western shore between the dock at Glen Ayr Recreational Vehicle Park and the Hoodspport Marina dock, also referred to as the Hoodspport Hatchery Zone - Open for beach seines 7:00 a.m. through 7:00 p.m. August 24, 2016.

(2) Fishers can only retain Chinook and must release all other salmon.

(3) Landing and possession limits:

(a) 190 Chinook per vessel per entire open period.

(b) No vessel may possess, land or deliver more than 190 Chinook during the open period.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-42800Q Beach seine—Open periods. (16-188)



The following section of the Washington Administrative Code is repealed effective 7:01 p.m. August 24, 2016:

WAC 220-47-42800R Beach seine—Open periods.

Date Adopted: August 5, 2016.

Katherine I. Vasquez  
Rules Coordinator

**WSR 16-17-147**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed August 24, 2016, 10:12 a.m., effective August 26, 2016]

Effective Date of Rule: August 26, 2016.

Purpose: The department is amending WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits?, to comply with changes in federal regulations regarding who is considered ineligible for benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-442-0010.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025.

Other Authority: 7 C.F.R. 273.11.

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 United States Department of Agriculture, Food and Nutrition Service (FNS) clarified who is considered ineligible for the supplemental nutrition assistance program (SNAP) due to fleeing from the law. Current Washington Administrative Code is in contradiction to federal rules enacted November 1, 2015. Lack of compliance with FNS rules can result in loss of funding for or penalization to SNAP in Washington. Additionally, the current rule makes certain Washington residents ineligible for SNAP benefits who are now eligible based on recently adopted federal regulations.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-442-0010** (~~How does being a fleeing felon impact my eligibility for benefits?~~) **Am I eligible for benefits if I am fleeing from the law or breaking a condition for parole or probation?** (1) (~~You are a fleeing felon if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.~~

~~(2)) If you are a fleeing felon(;) or violating a condition of probation or parole (as determined by an administrative body or court that has the authority to make this decision,)) you are not eligible for ((TANF/SFA)) temporary assistance for needy families (TANF), state family assistance (SFA), ((PWA)) pregnant women assistance (PWA), ((ABD)) aged, blind, or disabled (ABD) cash, referral to the ((HEN)) housing and essential needs (HEN) program, or basic food benefits.~~

(2) You are a fleeing felon if:

(a) A federal, state, or local law enforcement officer presents us with a felony arrest warrant that includes the national crime information center (NCIC) codes for escape (4901), flight to avoid (4902), or flight-escape (4999);

(b) The officer presenting the warrant is acting in an official capacity to obtain information on your location or other information; and

(c) You are the individual named in the warrant.

(3) You are violating a condition of parole or probation when:

(a) An administrative or judicial order has found you in violation of the terms of your parole or probation; and

(b) A law enforcement agency is actively seeking you to enforce the conditions of your parole or probation.

(4) "Actively seeking" as used in subsection (3)(b) of this section means a law enforcement agency intends to arrest you for a probation or parole violation within:

(a) Thirty days from the date we request information about the parole or probation violation; or

(b) Twenty days from the date the law enforcement agency requests information from us.

**WSR 16-17-150**  
**EMERGENCY RULES**  
**BELLEVUE COLLEGE**

[Filed August 24, 2016, 10:52 a.m., effective August 24, 2016, 10:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Bellevue College currently has its policies and procedures governing student educational records pursuant to the Family Education Rights and Privacy Act (FERPA) memorialized in chapter 132H-410 WAC. Publication of the FERPA policies in the administrative code is no longer required and the college administration needs the ability to

revise these policies without undergoing time consuming rule-making processes and procedures.

Citation of Existing Rules Affected by this Order: Repealing WAC 132H-410-010 through 132H-410-110.

Statutory Authority for Adoption: RCW 28B.50.140, 20 U.S.C. sec. 1232g.

Other Authority: 34 C.F.R Part 99.37.

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

Reasons for this Finding: Regulations recently adopted by the United States Department of Education restrict the types of personally identifiable student information institutions of higher education can share with third parties who are responsible for distributing financial aid to students. Bellevue College is contracting with a third party to distribute financial aid to its students. Bellevue College students will be provided the option of having the financial aid mailed to their home addresses, electronically deposited in a designated bank account, or linked to debit cards. Under the department of education (DOE) regulations applicable to Bellevue College's third party contractor, the college can only share the following student information with the third party contractor before the student selects a payment option: A secret PIN number, a unique identification number, the amount of the financial aid grant, and any information that has been designated by the college as directory information. If the student does not select a payment option, the default option is mailing the check to the student's home address. Based upon past experience, many students do not select a payment option and, therefore, their financial aid is distributed by mail.

Currently, student addresses, birthdates, phone numbers, and gender are not included in the college's definition of directory information, which is memorialized in WAC 132H-410-100. Lacking a mailing address, the third party contractor will not be able to mail checks to students who do not select a delivery option. Birthdates, gender and telephone numbers are used as a means of confirming the student's identity. An emergency repeal of the directory rule is necessary because amending the definition of directory information using regular rule making cannot be accomplished in time for the distribution of financial aid for fall quarter 2016.

The college is repealing the remainder of the FERPA rules because federal law does not require that they be memorialized as state regulations and because doing so will provide the administration with needed flexibility when it comes to making revisions to these policies. FERPA requires that the college notify students about FERPA and their rights under the act in an annual notification and in notices that are posted in the college's catalog and on its web site. DOE has recognized that these notices are sufficient to inform students of their rights under FERPA. There is no requirement that these policies or procedures be memorialized as 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 11; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 11.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 11.

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: July 9, 2016.

Lisa Corcoran  
Rules Coordinator

### REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                  |   |
|------------------|---|
| WAC 132H-410-010 | Family Education Rights and Privacy Act—General policy. |
| WAC 132H-410-020 | Definitions.  |
| WAC 132H-410-030 | Annual notification of rights.                          |
| WAC 132H-410-040 | Primary rights of students.                             |
| WAC 132H-410-050 | Inspection of education records.                        |
| WAC 132H-410-060 | Limitation on right of access.                          |
| WAC 132H-410-070 | Refusal to provide copies.                              |
| WAC 132H-410-080 | Types, locations, and custodians of education records.  |
| WAC 132H-410-090 | Disclosure of education records.                        |
| WAC 132H-410-100 | Directory information.                                  |
| WAC 132H-410-110 | Correction of education records.                        |