

**WSR 16-18-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-220—Filed August 25, 2016, 11:24 a.m., effective August 25, 2016, 11:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for personal-use license.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-55-24000A.

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

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: Washington department of fish and wildlife will not require anglers to have a fishing license to fish or gather shellfish in any waters open to fishing in Washington state through August 30, 2016. This emergency rule is needed because the agency's license sales system is down. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 25, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-55-24000A Personal-use licenses.** Notwithstanding the provisions of Chapter 220-55, WAC, effective immediately through 11:59 p.m. August 30, 2016, a fishing license is not required for any person, regardless of age or residency, to fish for or possess fish and shellfish. A fish and wildlife vehicle access pass and a Discover Pass are not required to utilize department lands and water access sites. Anglers may fish with two poles in all waters where it is legal to do so without purchasing a two-pole endorsement. Anglers may also fish in all open areas of the Columbia River and tributaries without purchasing a Columbia River endorsement. Anglers may also crab in all open areas of Puget Sound

without purchasing a Puget Sound crab endorsement. Unless otherwise amended, all other permanent rules remain in effect.

**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 August 31, 2016:

WAC 220-55-24000A Personal-use licenses.

**WSR 16-18-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-221—Filed August 25, 2016, 4:32 p.m., effective August 25, 2016, 4:32 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 220-47-42800S; 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: The department has adopted permanent rules necessary to implement the commercial fishing plans developed through the North of Falcon season setting process. These rules are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 25, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-47-42800S Beach seine—Open periods.**

Notwithstanding the provisions of WAC 220-47-428, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the areas and open periods indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods
12A	7 AM - 7 PM daily 8/25, 8/26, 8/29, 8/30, 8/31, 9/1, 9/2, 9/5, 9/6, 9/7, 9/8, 9/9, 9/12, 9/13, 9/14, 9/15, 9/16, 9/19, 9/20, 9/21, 9/22, 9/23, 9/26, 9/27, 9/28, 9/29, 9/30

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. September 30, 2016:

WAC 220-47-42800S Beach seine—Open periods.

**WSR 16-18-015  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-223—Filed August 25, 2016, 4:40 p.m., effective August 25, 2016, 4:40 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 220-52-05100U; 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 Catch Areas 23A-C and 23B, as the quota has been reached; and (2) reduces the weekly limit in 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 25, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-52-05100V 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, 23A-C and 23B 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 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.

(ii) Effective immediately, until 11:59 p.m. August 30, 2016, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 200 pounds in Catch Area 25A.

(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 220-52-05100U Puget Sound shrimp pot and beam trawl fishery—Season. (16-217)

**WSR 16-18-020**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-219—Filed August 26, 2016, 10:17 a.m., effective August 26, 2016, 10:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish 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, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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: Chinook catch at the Buoy 10 recreational fishery is less than anticipated. Removing the mark-selective regulations for the last two days (September 4 and 5) will provide additional opportunity and not pose any substantial risk to meeting the preseason objective of having Chinook retention through Labor Day. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall Chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of August 25, 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 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 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 1, Amended 0, Repealed 1.

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

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

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

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

Date Adopted: August 26, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-20000Y Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**Columbia River:** From a true north/south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

(1) On Sundays and Mondays through August 29, all Chinook must be adipose fin-clipped or left-ventral fin clipped to be retained.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective September 6, 2016:

WAC 220-310-20000Y Freshwater exceptions to statewide rules—Columbia River.

**WSR 16-18-021**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-222—Filed August 26, 2016, 10:33 a.m., effective August 26, 2016, 10:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Columbia River seine fishery emerging commercial fishery.

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

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: Modifies the allowable sales to include unclipped Chinook on certain days with certain gear. The change in retention rules is part of an investigation to determine if fishers can accurately identify Chinook stock (bright or tule) based on visual characteristics. Fishers may keep all bright unclipped Chinook and are asked to release any unclipped Chinook deemed tule stock. 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 and 25, 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 26, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-88-07000H 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 29 and Wednesday August 31, 2016
  - ii. Tuesday, Wednesday, Thursday, and Friday September 6-9, 2016
  - iii. Monday, Tuesday, Wednesday, Thursday, and Friday September 12-16, 2016
  - iv. Monday September 19 and Wednesday September 21, 2016
  - v. 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:** Elokomin-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 220-88-08000E 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. **EXCEPT -any Chinook caught with a purse seine on September 7 and any Chinook caught with a beach seine on September 14 may be kept. On these days, all legal hatchery Chinook must be retained 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:

WAC 220-88-07000G Columbia River seine emerging commercial fishery—Season, area, and gear requirements. (16-211)

WAC 220-88-08000D Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (16-211)

**WSR 16-18-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-224—Filed August 26, 2016, 10:40 a.m., effective August 26, 2016, 10:40 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000S; and amending WAC 220-33-010.

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

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

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

Reasons for this Finding: Sets two additional fishing periods for the 2016 fall season for non-Indian commercial fisheries in the mainstem Columbia River and select area sites. The preseason forecast for the Columbia River return of fall Chinook is nine hundred sixty thousand two hundred fish. This forecast provides harvestable Chinook for commercial purposes. Harvest estimates for the seasons are well within ESA limits and sharing guidelines. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 27 and August 25, 2016. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries

accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, 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 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 26, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-33-01000T Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Mainstem Columbia River**

(a) **Season:** 9:00 PM Sunday August 28 to 6:00 AM Monday August 29, 2016

9:00 PM Tuesday August 30 to 6:00 AM Wednesday August 31, 2016

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

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

(d) **Allowable Possession:** Chinook, Coho, Sockeye and Pink salmon and shad.

(e) **Gear:** Drift nets only. 9-inch minimum mesh size.

**(2) Deep River Select Area.**

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights immediately through September 2, 2016 and:

Monday, Tuesday, Wednesday, Thursday and Friday nights September 5-September 24, 2016

Monday, Tuesday, Wednesday, and Thursday nights September 26-October 19, 2016

Open hours are 7 PM to 7 AM through Sept. 10 and 6 PM to 9 AM thereafter.

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

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4 -inch through September 10, and 6-inch thereafter. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

**(3) Tongue Point/South Channel**

(a) **Season:** Monday, Tuesday and Wednesday nights immediately through September 1, 2016

Monday, Tuesday, Wednesday, and Thursday nights September 5-October 28, 2016

Open Hours: 7 PM-7 AM through September 9 and 4 PM-10 AM thereafter.

(b) **Area:** Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper bound-

ary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

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

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

**(4) Blind Slough/Knappa Slough Select Area**

(a) **Dates:** Monday, Tuesday and Wednesday nights immediately through September 1, 2016

Monday, Tuesday, Wednesday, and Thursday nights September 5-October 28, 2016

Open Hours: 7 PM-7 AM through September 9 and 6 PM-10 AM thereafter.

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

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

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

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

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

(b) ALLOWABLE POSSESSION: Chinook, Coho, Pink and Sockeye salmon and shad.

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

(6) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000S Columbia River seasons below Bonneville. (16-195)

**WSR 16-18-025**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 26, 2016, 11:36 a.m., effective August 26, 2016, 11:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To remove the language in rule that restricts the amount of funds that career and technical education (CTE) programs can carry over to the ensuing school year to the amount of the CTE enhancement. The current rule combined with the current enhancement level, does not allow school districts to access a carryover equal to ten percent.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-571 and 392-121-578.

Statutory Authority for Adoption: RCW 28A.150.290 and 28A.710.220.

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: Without this rule change in place before the end of the school fiscal year, districts will be faced with a transferring of expenditures between programs for no benefit, and they will not be able to access the full ten percent carryover as intended in the law.

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 2, 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 26, 2016.

Randy Dorn  
Superintendent of  
Public Instruction

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

**WAC 392-121-571 Vocational indirect cost limit—Definitions.** As used in WAC 392-121-570 through 392-121-578:

(1) "Program 31" means the high school vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(2) "Program 34" means the middle school vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(3) "Basic allocation for vocational students" means the amount of money generated by a school district's or charter school's vocational full-time equivalent enrollment in the general apportionment formula using the state funding formula factors including the grade 4-12 staffing ratios without enhancement, and using the district's or charter school's average certificated instructional staff mix factor for program 31 staff from the district's S-275 personnel report.

~~((3))~~ (4) "Enhancement allocation for vocational students" means the additional money above the basic allocation for vocational students generated by a school district's or charter school's vocational full-time equivalent enrollment as a result of the enhanced state vocational staffing ratio and enhanced nonemployee related cost allocation for vocational students. This enhancement shall be calculated using the district's or charter school's average certificated instructional staff mix factor for program 31.

~~((4))~~ (5) "Vocational running start allocation" means the amount generated in the general apportionment formula by a school district's or charter school's running start students enrolled in vocational courses in a community or technical college pursuant to chapter 392-169 WAC.

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

**WAC 392-121-578 Vocational indirect cost limit—Recovery of state allocations.** (1) At the time of the January apportionment calculations after the close of the school year, the superintendent of public instruction shall recalculate each school district's or charter school's minimum direct expenditures.

(2) If the district's or charter school's program 31 expenditures are below the minimum program 31 expenditure amount, the district or charter school shall be allowed to carry over into the ensuing school year an amount equal to up to ten percent of the minimum expenditure amount excluding any carryover from the prior school year (~~(-The actual amount carried over to the ensuing year shall be no more than the vocational enhancement)~~), less ~~((the))~~ recovery.

(3) The superintendent of public instruction shall recover from the district's or charter school's general apportionment allocation as a prior year adjustment an amount equal to the lesser of the district's or charter school's enhancement allocation for vocational students or the following amount:

(a) The district's or charter school's minimum program 31 expenditures; minus

(b) The district's or charter school's program 31 expenditures plus any allowable carryover.



(4) Recoveries made pursuant to this section shall be adjusted after the January apportionment calculation if revised enrollment, staff mix, or expenditure data submitted by the district or charter school and accepted by the superintendent of public instruction materially affects the district's or charter school's recovery amount.

**WSR 16-18-032**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-225—Filed August 26, 2016, 1:31 p.m., effective August 26, 2016, 1:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for coastal salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000Z; 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: This emergency rule is needed to close the salmon fishery in Marine Area 1 because the coho quota for the recreational fishery is projected to be met on August 27. 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 26, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 232-28-62000A Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice,

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

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

(a) Immediately through August 27:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

(b) August 28 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 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 until further notice: Closed.

(7) **Catch Record Card Area 4:**

(a) Immediately until further notice: Closed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000Z Coastal salmon—Saltwater seasons and daily limits. (16-206)

## WSR 16-18-037

## EMERGENCY RULES

## DEPARTMENT OF AGRICULTURE

[Filed August 30, 2016, 9:11 a.m., effective August 30, 2016, 9:11 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule-making order amends chapter 16-470 WAC by:

(1) Adding municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes to the list of commodities regulated under the apple maggot quarantine;

(2) Establishing a special permit to allow transportation and disposition of municipal solid waste from the area under quarantine for disposal at a solid waste landfill or disposal facility in the apple maggot and plum curculio pest-free area; and

(3) Establishing a special permit to allow transportation and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes from the area under quarantine for disposal at a solid waste landfill or treatment at a composting facility in the apple maggot and plum curculio pest-free area.

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-101, 16-470-108, 16-470-111, 16-470-113, 16-470-115, 16-470-118, 16-470-122, 16-470-127, and 16-470-130.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.041.

Other Authority: Chapter 34.05 RCW.

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

Reasons for this Finding: The agency had been working with the solid waste industry and other stakeholders regarding reissuance of a special permit under WAC 16-470-130 when it determined that section applied only to special permits for transport of fresh fruit. Without the emergency adoption of a rule allowing issuance of special permits for transport of municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes to solid waste disposal facilities or composting facilities in the pest-free area, the affected industry stakeholder(s) would lack alternatives to properly dispose of existing waste, creating storage and disposal backups with potential health risks and financial risks to the municipal corporations dependent on their contractors to properly and timely dispose of the waste.

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 9, 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 9, Repealed 0.

Date Adopted: August 30, 2016.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-101 Establishing quarantines for apple maggot and plum curculio.** Apple maggot (*Rhagoletis pomonella*) and plum curculio (*Conotrachelus nenuphar*) are insects with a larval (worm) stage that develops within fruit. These insects are capable of attacking many fruit crops grown in Washington. Apple maggot is not established in significant portions of the major fruit production areas east of the Cascade Mountains, and plum curculio is not established anywhere in the state. An increased range for either insect would cause decreased environmental quality and economic loss to the agricultural industries of the state by increasing production inputs and jeopardizing foreign and domestic markets.

(1) The director (~~(of agriculture)~~), pursuant to chapter 17.24 RCW, has determined that the regulation and/or exclusion of fresh fruits grown or originating from areas infested with apple maggot or plum curculio is necessary to protect the ~~((environmental quality))~~ environment and agricultural crops of the state.

(2) The director, pursuant to chapter 17.24 RCW, has determined that municipal solid waste originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such municipal solid waste from the pest free area is necessary to protect the environment and agricultural crops of the state. The transport into and disposition of such municipal solid waste in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(1).

(3) The director, pursuant to chapter 17.24 RCW, has determined that yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such waste from the pest free area is necessary to protect the environment and agricultural crops of the state. The transport into and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(2).

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-108 Distribution of infested or damaged fruit is prohibited.** Regulated commodities

~~((described))~~ specified in WAC 16-470-111(1) and 16-470-125(2) that are known or found to be infested or damaged by apple maggot or plum curculio may not be distributed, sold, held for sale, or offered for sale, unless the fruit has undergone cold storage treatment, in compliance with WAC 16-470-113 (1)(a) and (b) or 16-470-127 (1)(a) and (b), and the necessary certificate has been issued by the appropriate plant protection organization.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-111 ~~((What))~~ Commodities ~~((are))~~ regulated for apple maggot~~((?))~~.** (1) All fresh fruit of apple (including crab apple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, and quince are regulated under quarantine for apple maggot.

(2) Municipal solid waste as defined in WAC 173-350-100 is regulated under quarantine for apple maggot. Municipal solid waste from the quarantine area is a host medium for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

(3) Yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 are regulated under quarantine for apple maggot. Yard debris, organic feedstocks, organic materials, and agricultural wastes from quarantine areas are host mediums for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-113 ~~((What do you need))~~ Requirements to ship commodities regulated for apple maggot from a state under quarantine into the pest free area for apple maggot~~((?))~~.** Shipment of ~~((regulated commodities))~~ fresh fruit, as ~~((described))~~ specified in WAC 16-470-111(1), from an area under quarantine, as ~~((described))~~ specified in WAC 16-470-105(3), into the pest free area for apple maggot, as ~~((described))~~ specified in WAC 16-470-105(1), is prohibited, unless at least one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment is composed of apples, which ~~((have))~~ has undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths ~~((37.9))~~ degrees Fahrenheit or less.

(b) The shipment is composed of ~~((regulated commodities))~~ fresh fruit specified in WAC 16-470-111(1) other than apples, which ~~((have))~~ has undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two ~~((32))~~ degrees Fahrenheit or less.

(c) The shipment is composed of ~~((regulated commodities))~~ fresh fruit specified in WAC 16-470-111(1) from Oregon, Idaho, or Utah, ~~((certified by the state of origin in com-~~

pliance with)) meeting the requirements under WAC 16-470-122.

(d) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been ~~((identity))~~ identified and maintained ~~((while))~~ separately from any fruit specified in WAC 16-470-111(1) grown within the area under quarantine. For repacked fruit, the certificate must show the following information:

(i) The state in which the fruit was grown;

(ii) The point of repacking and reshipment;

(iii) The amount and kind of commodities comprising the lot or shipment; and

(iv) The names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for apple maggot and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.

(3) The fruit is frozen solid.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-115 ~~((Within Washington state, what is required to ship fruit))~~ Requirements for shipment of regulated commodities from the quarantine area for apple maggot into the pest free area ~~((for apple maggot from quarantined areas?))~~ within Washington state.** Shipment of regulated commodities, as ~~((described))~~ specified in WAC 16-470-111, from an area under quarantine, as ~~((described))~~ specified in WAC 16-470-105(2), into the pest free area for apple maggot, as ~~((described))~~ specified in WAC 16-470-105(1), is prohibited, unless one of the following applicable conditions is met:

(1) The shipment of fresh fruit is accompanied by a permit for movement of fruit issued by the department verifying one of the following:

(a) The fresh fruit came from orchards and production sites that are not threatened with infestation; or

(b) The fresh fruit has completed treatment as specified in WAC 16-470-118(3). If records of treatment verifying compliance with conditions specified in WAC 16-470-118(3) are made available to the department, no reinspection is required by the department.

(2) The shipment of fresh fruit is ~~((accompanied by a permit issued by the department in fulfillment of))~~ in compliance with the applicable conditions under WAC 16-470-118 (2) and (3) ~~((, which specifies conditions for shipment from orchards and production sites that are infested or threatened with infestation)).~~

(3) The shipment of municipal solid waste from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate disposal or treatment facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(1).

(4) The shipment of yard debris, organic feedstocks, organic materials, or agricultural wastes from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate treatment or compost-

ing facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(2).

**AMENDATORY SECTION** (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-118 Requirements within Washington state**~~(, what is required))~~ **to ship fresh fruit into, within, or through the pest free area for apple maggot from an orchard or production site that is infested or threatened with infestation**~~((?)).~~ All ~~((regulated commodities))~~ **fresh fruit**, as ~~((described))~~ **specified** in WAC 16-470-111(1), from an orchard or production site that is infested or threatened with infestation by apple maggot must be inspected ~~((except graded culls—See subsection (4) of this section))~~ by the department following accepted agency standards.

(1) If ~~((regulated commodities are))~~ **the fresh fruit** is inspected and found free of apple maggot, the shipment must be accompanied by a permit for movement of fruit issued by the department.

(2) If ~~((regulated commodities are))~~ **the fresh fruit** is found to be infested with apple maggot, a permit from the department, which specifies conditions for handling and shipment, is required to transport the fruit within or through the pest free area. No permit may be issued under this subsection for transportation of ~~((regulated commodities))~~ **fresh fruit** found to be infested with apple maggot into the pest free area for apple maggot.

(3) If ~~((regulated commodities are))~~ **the fresh fruit** is found to be infested with apple maggot, one or more of the following treatments must be performed and verified by the department as specified in WAC 16-470-115 (1)(b) before the ~~((commodity))~~ **fruit** is moved from area(s) designated or quarantined by the department:

(a) Apples (including crab apples) **must be cold treated** as specified in WAC 16-470-113 (1)(a).

(b) ~~((Regulated commodities))~~ **Fruit other than apples must be cold treated** ~~((as))~~ **under the conditions** specified in WAC 16-470-113 (1)(b).

(c) Other methods as prescribed in writing by the department.

(4) If the shipment contains graded culls, it must comply with the conditions specified in WAC 16-470-113 (1)(a) ~~((and))~~ **or (b), dependent on the category of fruit.**

**AMENDATORY SECTION** (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-122** ~~((What are the))~~ **Requirements to ship regulated articles from Oregon, Idaho, or Utah into the pest free area for apple maggot**~~((?)).~~ Commercially grown fresh fruit from Oregon, Idaho, or Utah may be shipped into the pest free area for apple maggot if both of the ~~((subsections of this section are complied with))~~ **following conditions are met:**

(1) A permit has been agreed to by the plant protection organization of the state of origin and the department. The permits must specify that the plant protection organization of the state of origin has conducted an adequate apple maggot detection program, which includes immediate written notifi-

cation to the department of detections in counties where apple maggot has not previously been detected.

(2) The plant protection organization of the state of origin certifies that the fruit originated in areas in which apple maggot is not established, was grown in a commercial orchard, and has not been placed under quarantine.

#### **NEW SECTION**

**WAC 16-470-124 Special permits for solid waste and organic waste transport and disposition.**

(1) The director may issue special permits admitting or allowing transportation and distribution of municipal solid waste for disposal at a solid waste landfill or appropriate disposal facility in the pest free area from the areas under quarantine established in WAC 16-470-105, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "solid waste" and "solid waste landfill" or "disposal facility" refer to solid waste and solid waste facilities regulated under chapters 70.95 RCW and 173-351 WAC by the Washington state department of ecology.

(2) The director may issue special permits admitting or allowing transportation and distribution of yard debris, organic feedstocks, organic materials, or agricultural wastes for treatment at a composting facility in the pest free area from the area under quarantine established in WAC 16-470-105, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "yard debris," "organic feedstocks," "organic materials," and "agricultural wastes" or "composting facility" refer to waste and composting facilities regulated under chapters 70.95 RCW and 173-350 WAC by the Washington state department of ecology. Conditions for issuing a special permit under this subsection include the following:

(a) Processing conditions. Organic waste (as defined under WAC 16-470-111(3)) from the quarantine area is mechanically ground or shredded in the quarantine area to a particle size small enough to aid heat exposure but large enough to produce a feedstock suitable for composting.

(b) Heat treatments. In the quarantine area, following processing as required under (a) of this subsection, the entire quantity of organic waste is exposed to one of the following heat treatment options:

(i) Temperature of at least 55°C (131°F) for a continuous period of two weeks;

(ii) Temperature of at least 65°C (149°F) over a continuous period of one week;

(iii) In the case of enclosed composting facilities, temperature of at least 60°C (140°F) for one week.

(iv) For (b)(i) through (iii) of this subsection, a minimum number of turnings may be required to ensure that the whole mass is exposed to the required temperature. Moisture content of the organic waste is required to be a minimum of forty percent.

(v) Temperature of at least 74°C (165°F) for four hours; or 80°C (176°F) for two hours; or 90°C (194°F) for one hour, with wet heat used for each temperature treatment option under this subsection.

(c) Sanitation. Any trailer that has been used to transport untreated organic waste must be thoroughly washed within the quarantine area prior to transporting organic waste into or through the pest free area.

(3) When the owner of the waste identified in subsections (1) and (2) of this section transfers ownership of the waste to a different person receiving the waste for disposal or treatment in the pest free area, both owners must apply for and receive special permits under this section. A special permit to transport will not be issued to the transporting owner unless a special permit is concurrently issued to the receiving facility owner under conditions specified by the director.

(4) The specific conditions listed in this section are not intended to be exclusive or to preclude other conditions that the director may prescribe when issuing a special permit to accomplish the purposes identified in this section and under RCW 17.24.003.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-127 (~~What do you need~~) Requirements to ship commodities regulated for plum curculio into Washington(2).** Shipment into the state of Washington of regulated commodities described in WAC 16-470-125 from states under quarantine for plum curculio is prohibited, unless one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment consists of apples, which have undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths (~~(37.9)~~) degrees Fahrenheit or less.

(b) The shipment consists of regulated commodities, which have undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two (~~(32)~~) degrees Fahrenheit or less.

(c) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been identity maintained while within the area under quarantine. For repacked fruit, the certificate must show the following information:

(i) State in which the fruit was grown;  
 (ii) Point of repacking and reshipment;  
 (iii) Amount and kind of commodities comprising the lot or shipment; and

(iv) Names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for plum curculio and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.

(3) The shipment consists of fresh fruit from Utah counties where plum curculio is established and is made in compliance with terms of a permit agreed upon by both the Utah and Washington plant protection organizations.

(4) The shipment consists of fresh fruit from Utah counties where plum curculio is not established, and all of the following conditions are complied with:

(a) The Utah plant protection organization has conducted an adequate plum curculio detection program, which includes immediate written notification to the department of detections in counties where plum curculio has not previously been detected; and

(b) The Utah plant protection organization certifies that the fruit originated in areas in which plum curculio is not established, was grown in a commercial orchard, and has not been placed under quarantine.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-130 Special permits for fresh fruit transport and distribution.** The director may issue special permits admitting, or allowing transportation and distribution of, regulated commodities described in WAC 16-470-111(1) and 16-470-125(2), which would not otherwise be eligible for entry from the area under quarantine, or for transportation or distribution, subject to conditions and provisions which the director may prescribe to prevent introduction, escape or spread of the quarantined pests.

## WSR 16-18-038

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed August 30, 2016, 9:32 a.m., effective August 30, 2016, 9:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Cancel and supersede the existing CR-103E filed as WSR 16-17-013 with this new CR-103E that corrects two rates that were incorrect. 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.

Katherine I. Vasquez  
Rules Coordinator

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 25, 2016.

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					
CARE CLASSIFICATION	KING COUNTY				
	AL Without Capital		AL With Capital		AFH
	Add-on	Add-on	ARC	EARC	
A Low	\$67.22	\$72.64	\$47.67	\$47.67	<del>(\$49.97)</del> <u>\$52.47</u>
A Med	\$72.74	\$78.16	\$54.03	\$54.03	<del>(\$56.53)</del> <u>\$59.36</u>
A High	\$81.57	\$86.99	\$59.30	\$59.30	<del>(\$63.11)</del> <u>\$66.27</u>
B Low	\$67.22	\$72.64	\$47.67	\$47.67	<del>(\$50.21)</del> <u>\$52.72</u>
B Med	\$74.96	\$80.39	\$60.39	\$60.39	<del>(\$63.41)</del> <u>\$66.58</u>
B Med-High	\$84.83	\$90.25	\$64.19	\$64.19	<del>(\$67.85)</del> <u>\$71.24</u>
B High	\$89.28	\$94.70	\$73.31	\$73.31	<del>(\$77.40)</del> <u>\$81.27</u>
C Low	\$72.74	\$78.16	\$54.03	\$54.03	<del>(\$56.53)</del> <u>\$59.36</u>
C Med	\$81.57	\$86.99	\$67.70	\$67.70	<del>(\$71.84)</del> <u>\$75.43</u>
C Med-High	\$101.43	\$106.85	\$90.09	\$90.09	<del>(\$93.72)</del> <u>\$98.41</u>
C High	\$102.44	\$107.86	\$90.95	\$90.95	<del>(\$95.01)</del> <u>\$99.76</u>
D Low	\$74.96	\$80.38	\$72.87	\$72.87	<del>(\$73.21)</del> <u>\$76.87</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
D Med	\$83.23	\$88.65	\$84.35	\$84.35	<del>(\$89.32)</del> <u>\$93.79</u>
D Med-High	\$107.49	\$112.91	\$107.13	\$107.13	<del>(\$107.23)</del> <u>\$112.59</u>
D High	\$115.79	\$121.21	\$115.79	\$115.79	<del>(\$121.94)</del> <u>\$128.01</u>
E Med	\$139.84	\$145.26	\$139.84	\$139.84	<del>(\$147.04)</del> <u>\$154.39</u>
E High	\$163.89	\$169.31	\$163.89	\$163.89	<del>(\$172.19)</del> <u>\$180.80</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$61.69	\$66.61	\$47.67	\$47.67	<del>(\$49.97)</del> <u>\$52.47</u>
A Med	\$65.02	\$69.94	\$51.91	\$51.91	<del>(\$54.34)</del> <u>\$57.06</u>
A High	\$79.37	\$84.29	\$56.56	\$56.56	<del>(\$59.81)</del> <u>\$62.80</u>
B Low	\$61.69	\$66.61	\$47.67	\$47.67	<del>(\$50.21)</del> <u>\$52.72</u>
B Med	\$70.52	\$75.44	\$57.22	\$57.22	<del>(\$60.10)</del> <u>\$63.11</u>
B Med-High	\$79.83	\$84.75	\$60.81	\$60.81	<del>(\$64.37)</del> <u>\$67.59</u>
B High	\$87.07	\$91.99	\$71.25	\$71.25	<del>(\$75.24)</del> <u>\$79.00</u>
C Low	\$65.02	\$69.94	\$52.12	\$52.12	<del>(\$54.74)</del> <u>\$57.48</u>
C Med	\$79.37	\$84.29	\$66.84	\$66.84	<del>(\$70.12)</del> <u>\$73.63</u>
C Med-High	\$98.10	\$103.02	\$83.73	\$83.73	<del>(\$87.17)</del> <u>\$91.53</u>
C High	\$99.09	\$104.01	\$89.04	\$89.04	<del>(\$92.41)</del> <u>\$97.03</u>
D Low	\$70.52	\$75.44	\$71.87	\$71.87	<del>(\$71.62)</del> <u>\$75.20</u>
D Med	\$80.98	\$85.90	\$82.67	\$82.67	<del>(\$86.95)</del> <u>\$91.30</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			
D Med-High	\$103.98	\$108.90	\$104.50	\$104.50	<del>(((\$103.99))</del> <u>\$109.19</u>
D High	\$112.63	\$117.55	\$112.63	\$112.63	<del>(((\$117.98))</del> <u>123.88</u>
E Med	\$135.52	\$140.44	\$135.52	\$135.52	<del>(((\$141.91))</del> <u>\$149.01</u>
E High	\$158.40	\$163.32	\$158.40	\$158.40	<del>(((\$165.84))</del> <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 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> <u>\$52.47</u>
A Med	\$65.02	\$70.26	\$50.86	\$50.86	<del>(((\$53.26))</del> <u>\$55.92</u>
A High	\$79.37	\$84.61	\$55.66	\$55.66	<del>(((\$58.73))</del> <u>\$61.67</u>
B Low	\$60.61	\$65.85	\$47.67	\$47.67	<del>(((\$50.21))</del> <u>\$52.72</u>
B Med	\$70.52	\$75.76	\$56.16	\$56.16	<del>(((\$59.01))</del> <u>\$61.96</u>
B Med-High	\$79.83	\$85.07	\$59.68	\$59.68	<del>(((\$63.13))</del> <u>\$66.29</u>
B High	\$87.07	\$92.31	\$67.41	\$67.41	<del>(((\$71.23))</del> <u>\$74.79</u>
C Low	\$65.02	\$70.26	\$50.86	\$50.86	<del>(((\$53.26))</del> <u>\$55.92</u>
C Med	\$79.37	\$84.61	\$63.20	\$63.20	<del>(((\$67.48))</del> <u>\$70.85</u>
C Med-High	\$98.10	\$103.34	\$80.54	\$80.54	<del>(((\$83.90))</del> <u>\$88.10</u>
C High	\$99.09	\$104.33	\$84.18	\$84.18	<del>(((\$87.47))</del> <u>\$91.84</u>
D Low	\$70.52	\$75.76	\$67.96	\$67.96	<del>(((\$67.80))</del> <u>\$71.19</u>
D Med	\$80.98	\$86.22	\$78.17	\$78.17	<del>(((\$82.29))</del> <u>\$86.40</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			
D Med-High	\$103.98	\$109.22	\$98.79	\$98.79	<del>(\$98.41)</del> <u>\$103.33</u>
D High	\$106.48	\$111.72	\$106.48	\$106.48	<del>(\$111.62)</del> <u>\$117.20</u>
E Med	\$128.11	\$133.35	\$128.11	\$128.11	<del>(\$134.23)</del> <u>\$140.94</u>
E High	\$149.75	\$154.99	\$149.75	\$149.75	<del>(\$156.86)</del> <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.

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

**WSR 16-18-041  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-226—Filed August 30, 2016, 10:31 a.m., effective August 30, 2016, 11:59 p.m.]

Effective Date of Rule: August 30, 2016, 11:59 p.m.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100V; 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 closes the pot fishery season for spot shrimp in Shrimp Management Areas 1A, 1B, 1C, 5 and Catch Areas 23A-W and 25A, as the quotas will be reached. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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 30, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-52-05100W 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 of Shrimp Management Areas 2W and 3 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, 23A-C, 23A-W, 23B and 25A are closed to the harvest of spot shrimp.

(b) Effective immediately, 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.

(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 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 30, 2016:

WAC 220-52-05100V Puget Sound shrimp pot and beam trawl fishery—Season. (16-223)

**WSR 16-18-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-227—Filed August 30, 2016, 3:28 p.m., effective September 5, 2016, 7:45 p.m.]

Effective Date of Rule: September 5, 2016, 7:45 p.m.

Purpose: Amend recreational fishing rules for Lake Wenatchee sockeye fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500R.

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 majority of adult sockeye salmon currently in Lake Wenatchee will soon become

largely unavailable to anglers due to their annual migration to the spawning grounds on the White and Little Wenatchee rivers. Sockeye condition and desirability will have declined drastically. This closure will further reduce unnecessary impacts to bull trout with such relatively few sockeye still being present in Lake Wenatchee.

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

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

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

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

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

Date Adopted: August 30, 2016.

J. W. Unsworth  
Director

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 7:45 p.m. September 5, 2016:

WAC 220-310-19500R Freshwater exceptions to statewide rules—Lake Wenatchee. (16-183)

**WSR 16-18-044**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-228—Filed August 30, 2016, 3:28 p.m., effective September 3, 2016]

Effective Date of Rule: September 3, 2016.

Purpose: Amend recreational fishing rules for the Tilton River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-185.

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: Fall Chinook and coho are being released on the Tilton River for reintroduction purposes and will provide recreational angling opportunity. After being released, the fish tend to temporarily congregate

at the release site. Providing a small sanctuary (closure around the release location) will allow the fish to recover and disperse as well as reduce the potential for snagging. 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 30, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-18500M Southwest—Freshwater exceptions to statewide rules.** Notwithstanding the provisions of WAC 220-310-185, effective September 3, 2016, until further notice, it is unlawful to fish in the waters of the Tilton River from the fish release site ramp in Gus Backstrom Park downstream 25 feet and upstream 25 feet from ramp.

#### **WSR 16-18-048**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed August 31, 2016, 11:09 a.m., effective September 1, 2016]

Effective Date of Rule: September 1, 2016.

Purpose: The department is updating WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?, 388-827-0145 How much money will I receive? and 388-827-0185 When will the department stop sending my DDD/SSP money?, to offer state supplemental payment (SSP) to those clients who were receiving prevocational services as of September 1, 2015.

Citation of Existing Rules Affected by this Order: Amending WAC 388-827-0115, 388-827-0145, and 388-827-0185.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: ESSB 6052 64th legislature, state plan amendment as authorized by the Social Security Administration (SSA).

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: A state plan amendment was authorized by SSA which added prevocational legacy as an SSP payment. In order to keep in compliance with the state plan, these rules are being updated. In addition, the federal government requires that the department of social and health services meet the SSP maintenance of effort (MOE). These rule changes are necessary to meet MOE and to prevent risk of losing federal funding by jeopardizing the medicaid program.

Prevocational services do not meet the federal Centers for Medicare and Medicaid Services (CMS) requirements as an integrated setting. SSP prevocational legacy will allow developmental disabilities administration clients to transition from prevocational services, which do not meet CMS requirements to access services, in an integrated setting. SSP prevocational legacy may be used to purchase needed services, such as respite, and other community services. This will help the welfare of individuals transitioning from prevocational services to more integrated community services. This will also allow clients to more easily remain in the community setting, and less likely to enter into an institutional setting.

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 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 22, 2016.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-028, filed 3/10/14, effective 4/10/14)

**WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?** Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or

received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allow-

ance, (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, 2013 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

(9) You meet the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS) and you are currently receiving SSI payments or you would receive SSI payments if you did not receive Social Security Title II benefits as a disabled adult child.

(10) As of March 31, 2011, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of one or two, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to April 1, 2011, or you received social security title II benefits as a disabled adult child prior to April 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

(11) As of September 1, 2016, you meet the following eligibility requirements:

(a) You exited DDD prevocational services on or after September 1, 2015;

(b) You do not receive prevocational services as defined in WAC 388-845-1400 through 388-845-1410; and

(c) You do not receive DDD residential habilitation services as defined in WAC 388-845-1500 through 388-845-1515.

AMENDATORY SECTION (Amending WSR 14-07-028, filed 3/10/14, effective 4/10/14)

**WAC 388-827-0145 How much money will I receive?**

The purpose of the SSP is to increase the amount of income

to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

(1) For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) If you receive SSP in lieu of individual and family services you will receive the following amounts based on your DDA assessment:

If your individual and family services score is:	The award level will be	The amount of your award will be
0-60	Not eligible	Not eligible
61-240	Level 1	\$1,200
241-336	Level 2	\$1,800
337-527	Level 3	\$2,400
528 or more	Level 4	\$3,600

(a) If you are on the home and community based services (HCBS) waiver administered by DDD:

(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.

(ii) The remainder up to the maximum yearly award for traditional family support or family support opportunities may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the traditional family support program between March 1, 2001 and June 30, 2003 the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.

(i) Need is based on your service need level and whether you receive medicaid personal care as specified in WAC 388-825-254.

(ii) If your need changes, the amount of your SSP will be adjusted accordingly.

(c) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the family support opportunity program between March 1, 2001 and June 30, 2003 the amount of your SSP will be fifteen hundred dollars per year.

(d) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.

(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115(5), you will receive one hundred dollars per month.

(4) DDD may authorize additional payments to certain individuals if the SSP budget has sufficient funds to allow this payment.

(5) If you receive DDD prevocational legacy SSP payments, you will receive three hundred dollars per month.

AMENDATORY SECTION (Amending WSR 04-15-094, filed 7/16/04, effective 8/16/04)

**WAC 388-827-0185 When will the department stop sending my DDD/SSP money?** The department will stop sending your DDD/SSP money when:

(1) You no longer are eligible for or receive SSI cash benefits and are ineligible for SSI for reasons other than the receipt of Social Security Title II benefits as a disabled adult child;

(2) You no longer demonstrate a need for the services as described in WAC 388-827-0115; ~~((or))~~

(3) Your DDD eligibility is terminated; or

(4) You receive DDD SSP prevocational legacy, and you begin receiving prevocational services or a DDD residential habilitation service.

**WSR 16-18-049**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 16-230—Filed August 31, 2016, 11:11 a.m., effective September 5, 2016]

Effective Date of Rule: September 5, 2016.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100S; 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 District 2W because the quota has been reached for the season. Harvestable surpluses of sea cucumbers exist in the district 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 31, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-52-07100T Sea cucumbers** Notwithstanding the provisions of WAC 220-52-071, effective September 5, 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 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: 25A, B, C, D, and E.

(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 September 5, 2016:

WAC 220-52-07100S Sea cucumbers. (16-210)

**WSR 16-18-050  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-229—Filed August 31, 2016, 11:12 a.m., effective September 15, 2016]

Effective Date of Rule: September 15, 2016.

Purpose: Amend recreational fishing rules for upper Columbia River.

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

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: Fall Chinook salmon and steelhead are sedated in a chemical anesthetic, MS-222, during sampling at the Priest Rapids Dam. The United States Food and Drug Administration (FDA) requires a twenty-one day

withdrawal period before human consumption of fish anesthetized in MS-222. WDFW staff are applying the 1/4 inch diameter hole, punched in the upper lobe of the tail of sampled fish, so that fishermen can visually identify fish that should be released. Salmon and steelhead marked and released at Priest Rapids Dam may be caught in fisheries both upstream and downstream. 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 31, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-20000Z Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, in waters of the Columbia River from the Highway 395 Bridge in Pasco to Chief Joseph Dam the following rules apply:

(1) Effective September 15 through October 31, 2016, anglers are required to release Chinook salmon with a 1/4 inch diameter (round) hole punched in the upper lobe of the caudal (tail) fin.

(2) Effective October 1 through December 6, 2016, anglers are required to release steelhead with a 1/4 inch diameter (round) hole punched in the upper lobe of the caudal (tail) fin.

#### REPEALER

This section of the Washington Administrative Code is repealed effective December 7, 2016:

WAC 220-310-20000Z Freshwater exceptions to statewide rules—Columbia River. (16-229)

**WSR 16-18-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-231—Filed August 31, 2016, 1:29 p.m., effective August 31, 2016, 1:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound scallops.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-069.

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

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

Reasons for this Finding: A harvestable surplus of pink and spiny scallops exists in the areas specified in Puget Sound to allow for commercial harvest. This emergency rule is needed because by permanent rule it is unlawful to take or possess pink or spiny scallops for commercial purposes, except during open scallop harvest seasons from open shellfish management areas as provided by emergency rule.

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

Number of Sections Adopted at 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 31, 2016.

J. W. Unsworth  
 Director

**NEW SECTION**

**WAC 220-52-06900K Commercial scallop fishery—Puget Sound** Notwithstanding the provisions of WAC 220-52-069, effective immediately until further notice, it is unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(2) Pink or spiny scallop harvest using shellfish diver gear is allowed in Scallop Area 1, which is defined as the

waters of marine fish - shellfish catch reporting areas 20A and 20B within the following boundaries: Point Doughty east along the shoreline of Orcas Island to Lawrence Point, then true north to 48° 42' 28" N latitude, 122° 44' 29" W longitude, then northwest to 48° 47' 18" N latitude, 122° 48' 8" W longitude, then northwest to 48° 50' 4" N latitude, 122° 50' 24" W longitude, then southwest to 48° 49' 46" N latitude, 122° 51' 59" W longitude, then southwest to 48° 46' 4" N latitude, 122° 57' 3" W longitude, then true south back to Point Doughty, except within 100 feet of any shoreline, or shallower than 30 feet below mean lower low water, whichever is further from shore, and within 2500 feet from the shoreline of Orcas Island between Point Doughty and Point Thompson, and those waters of Echo Bay, Sucia Island west of a line projected from Johnson Point to the southeast tip of Ewing Island. Pink or spiny scallop harvest using shellfish diver gear is also allowed in Washington Department of Health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B and 25A.

(3) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(4) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations, or possess any other species of commercial shellfish on a vessel that has pink or spiny scallops on board.

**WSR 16-18-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-233—Filed September 1, 2016, 11:55 a.m., effective September 2, 2016, 6:00 a.m.]

Effective Date of Rule: September 2, 2016, 6:00 a.m.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100W; 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) opens the spot shrimp pot "clean up" fishery in Shrimp Management Areas 1A, 1B, 1C, portions of 3, and 5; (2) lowers the spot shrimp limit in these areas to harvest the relatively small amounts of quota remaining; and (3) closes all areas remaining open for spot shrimp on September 13 to protect female spot shrimp at

the onset of the egg-bearing period. 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: September 1, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-52-05100X 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 of 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, 23A-C, 23A-W, 23B and 25A are closed to the harvest of spot shrimp.

(iii) All waters of Shrimp Management Areas 1A, 1B and 5 are open to the harvest of spot shrimp until closing to the harvest of all shrimp species at 6:00 p.m. September 5, 2016.

(iv) All waters of Shrimp Management Area 1C are open to the harvest of spot shrimp until closing to the harvest of all shrimp species at 6:00 p.m. September 9, 2016.

(v) All waters of Catch Areas 23A-S, 23C, 23D and 29 are open to the harvest of all shrimp species until closing to the harvest of spot shrimp at 6:00 p.m. September 13, 2016.

(b) Effective immediately, until 6:00 p.m. September 5, 2016, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 265 pounds in Shrimp Management Area 1A, or to exceed 320 pounds in Shrimp Management Area 1B, or to exceed 600 pounds in Shrimp Management Area 5.

(c) Effective immediately, until 6:00 p.m. September 9, 2016, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 620 pounds in Shrimp Management Area 1C.

(d) Effective immediately, until 6:00 p.m. September 13, 2016, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,075 pounds in Catch Area 23A-S/23D, or to exceed 240 pounds in Catch Area 23C.

(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.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 2, 2016:

WAC 220-52-05100W Puget Sound shrimp pot and beam trawl fishery—Season. (16-226)

#### **WSR 16-18-059**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 16-232—Filed September 1, 2016, 1:27 p.m., effective September 6, 2016]

Effective Date of Rule: September 6, 2016.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish 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, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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: Chinook catch at the Buoy 10 recreational fishery is less than anticipated. Extending the retention season beyond the September 6 scheduled closure date will provide additional opportunity. The seasons are consistent with the U.S. v. Oregon 2008-2017 Interim Management Agreement and the fall Chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of August 25 and 31, 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 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 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 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: September 1, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-20000A Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, effective September 6 through September 14, 2016, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect: **Columbia River:** From a true north/south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

- (1) Chinook retention allowed.
- (2) Any Chinook (clipped or unclipped) may be retained.
- (3) Chinook minimum size is 24 inches.

#### REPEALER

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

WAC 220-310-20000A Freshwater exceptions to statewide rules—Columbia River.

**WSR 16-18-063**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-234—Filed September 1, 2016, 4:56 p.m., effective September 4, 2016, 12:01 a.m.]

Effective Date of Rule: September 4, 2016, 12:01 a.m.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100Z, 220-47-40100L and 220-47-41100T; and amending WAC 220-47-311, 220-47-401, 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: The department has adopted permanent rules necessary to implement the commercial fishing plans developed through the North of Falcon season setting process. These rules are interim until permanent rules take effect. Additionally, effective at 11:59 p.m. September 3, 2016, the Fraser River panel under the Pacific Salmon Commission will relinquish regulatory control in Areas 7 and 7A. Per agreement with comanagers, the reef net fishery begins following relinquishment of regulatory control by the Fraser River panel. 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 3, Amended 0, Repealed 3.

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

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

Date Adopted: September 1, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-47-31100Z 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	6 AM - 8 PM daily 9/5, 9/7, 9/9 7 AM - 7 PM daily 9/12, 9/14, 9/16 7 AM 9/18 - 11:59 PM 10/1

NEW SECTION

**WAC 220-47-40100L Reef net—Open periods.** Notwithstanding the provisions of WAC 220-47-401, 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 as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open Areas	Open Periods
7	5 AM - 9 PM daily 9/4 - 10/1

NEW SECTION

**WAC 220-47-41100T 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
6D	7 AM - 7 PM daily 9/21, 9/22, 9/23, 9/26, 9/27, 9/28, 9/29, 9/30	Minimum 5 inch
7B	7 AM 9/4 - 7 AM 9/9 7 AM 9/11 - 7 AM 9/16 7 AM 9/11 - 11:59 PM 10/1	Minimum 5 inch
9A	Immediately through 11:59 PM 10/1	Minimum 5 inch

REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. October 2, 2016:

- WAC 220-47-31100Z Purse seine—Open periods.
- WAC 220-47-40100L Reef net—Open periods.
- WAC 220-47-41100T Gillnet—Open periods.

**WSR 16-18-074  
EMERGENCY RULES  
DEPARTMENT OF HEALTH**

(Pharmacy Quality Assurance Commission)

[Filed September 2, 2016, 5:41 p.m., effective September 2, 2016, 5:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: New chapter 246-873A WAC, Pharmacy hospital standards, the pharmacy quality assurance commission (commission) is establishing standards supporting the regulatory, inspection, and investigation of pharmacy services provided in individual practitioner offices and multipractitioner clinics owned and operated by a hospital based on the level of risk and the type of pharmacy services provided at a particular location.

Statutory Authority for Adoption: RCW 18.64.005.

Other Authority: SSB 6558.

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

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

Reasons for this Finding: SSB 6558 (chapter 118, Laws of 2016) directs the commission to adopt emergency rules until permanent rule making is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

Number of Sections Adopted at 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 10, Amended 0, Repealed 0.

Date Adopted: August 3, 2016.

Tim Lynch  
Commission Chair

## Chapter 246-873A WAC

### HOSPITAL PHARMACY ASSOCIATED CLINICS

#### NEW SECTION

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

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

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

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

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

(5) "Parent hospital pharmacy" means a hospital pharmacy licensed under chapter 70.41 RCW, adding hospital

pharmacy associated clinics to their hospital pharmacy license in accordance with chapter 18.64 RCW and this chapter.

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

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

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

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

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

#### NEW SECTION

**WAC 246-873A-020 Hospital pharmacy associated clinic—Licensing.** (1) New hospital pharmacy license. A parent hospital pharmacy applying for a new hospital pharmacy license or submitting a change in hospital ownership must:

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

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

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

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

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

(3) HPAC locations are identified as follows:

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

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

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

#### NEW SECTION

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

NEW SECTION

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

NEW SECTION

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

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

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

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

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

### WSR 16-18-082

#### EMERGENCY RULES

#### WESTERN WASHINGTON UNIVERSITY

[Filed September 6, 2016, 9:56 a.m., effective September 6, 2016, 9:56 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Immediate adoption of Western Washington University's student conduct code, chapter 516-21 WAC, is necessary to comply with the amendments to the student assistance general provisions regulations issued under the Higher Education Act of 1965, as amended, to implement the changes made to the Clery Act by the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4). These provisions are also necessary to comply with the state legislature's recent adoption of statutes and amendments related to campus sexual violence, chapter 92, Laws of 2015.

Citation of Existing Rules Affected by this Order: Repealing WAC 516-21-320; and amending WAC 516-21-010, 516-21-020, 516-21-030, 516-21-060, 516-21-110, 516-21-130, 516-21-140, 516-21-150, 516-21-180, 516-21-190, 516-21-220, 516-21-240, 516-21-250, 516-21-260, 516-21-270, 516-21-280, 516-21-290, 516-21-300, and 516-21-340.

Statutory Authority for Adoption: RCW 28B.35.120, 20 U.S.C. 1681-1688 (Title IX Education Amendments of 1972), and chapter 35 [28B.35] RCW.

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: These amendments (34 C.F.R. Part 668.46) went into effect July 1, 2015, and apply to Western Washington University as a recipient of federal funds. The amendments to state law went into effect July 24, 2015. These changes to chapter 516-21 WAC, Student conduct code for Western Washington University, confirm that Western Washington University prohibits sexual misconduct (sexual assault, sexual harassment, sexual exploitation, stalking, relationship or dating violence, and domestic violence);

clearly defines sexual misconduct and "consent"; clarifies the steps under Western Washington University's disciplinary process that apply in cases involving an allegation of sexual misconduct; and makes clear that protective interim measures can be implemented following an allegation of sexual misconduct.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 19, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 6, 2016.

Jennifer L. Sloan  
Rules Coordinator

### Chapter 516-21 WAC

#### STUDENT (~~(RIGHTS AND RESPONSIBILITIES)~~) CONDUCT CODE

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-010 Introduction.** Western Washington University students enjoy the same basic rights, privileges, and freedoms granted to all members of society. At the same time, acceptance of admission to the university carries with it an obligation to fulfill certain responsibilities and expectations as a member of the Western Washington University community.

As a (~~(condition of enrollment at)~~) member of the Western community, students must assume responsibility for their own actions and maintain an environment conducive to (~~(the))~~ academic success(~~(, safety, and well being of others))~~). In addition, they are expected to be truthful, respect the rights of others, and abide by all university policies and procedures, as well as all applicable local, state, and federal laws and regulations. All students are responsible for understanding and complying with the responsibilities and expectations set forth in this code both on and off campus.

The student conduct process (~~(at Western is designed to be a learning process that promotes an understanding of students' responsibilities as members of the university community. The objectives of the student conduct system, as set forth in this code, are twofold: To ensure that students act in a manner consistent with high standards of scholarship and behavior, and to maintain))~~) is intended to be educational while ensuring that students act in a manner consistent with high standards of scholarship and behavior, while maintain-

ing the safety and well-being of all members of the university community.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-020 Definitions.** As used in this chapter, the following words and phrases mean:

(1) ~~((Appeals board. The student conduct appeals board.~~

(2)) **Business day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

~~((3))~~ (2) **Catalog.** The *Western Washington University General Catalog*.

~~((4))~~ (3) **Code.** The student ~~((rights and responsibilities))~~ conduct code.

(4) **Board.** The review board.

(5) **Conduct hold** ~~((or judicial hold))~~. A block placed on a student's official university record at the request of the conduct officer or dean of students. A conduct ~~((or judicial))~~ hold prohibits a student from registering for classes, requesting an official transcript, or receiving a degree from the university until the hold has been removed.

(6) **Conduct officer.** The ~~((student))~~ conduct officer or ~~((his/her))~~ their authorized designee.

(7) **Dean of students.** The dean of students or ~~((his/her))~~ their authorized designee.

(8) **Guest.** Any person who is not a member of the university community, who is on university property or attending an official university function at the invitation and/or hosting of a student.

(9) **Member of the university community.** Any person who is a student, university official, or who is otherwise employed or contracted by the university. A person's status in a particular situation shall be determined by the dean of students.

(10) **Official university function.** Any activity, on or off campus, that is initiated, sponsored, or supervised by any entity of Western Washington University.

(11) **Preponderance of evidence.** Defined as "more likely than not," the standard of responsibility that is used when determining whether a violation of the student ~~((rights and responsibilities))~~ conduct code has occurred.

(12) **Student.** Any person who:

(a) Has been formally admitted to the university;

(b) Is enrolled in one or more classes at the university, including nonmatriculated international students attending language institutes or foreign study programs;

(c) Is participating in a certificate, degree, distance learning, or professional enrichment program, through extended education and summer programs;

(d) Is participating in a university-sponsored study abroad program;

(e) Was enrolled in a prior quarter or summer session at the university and is eligible to continue enrollment in the quarter or summer session that immediately follows; or

(f) Withdrew from the university after an alleged violation of the code, for conduct that occurred while they were

enrolled in or participating in a program offered by the university.

(13) **University.** Western Washington University and all associated programs, including those offered online and/or at off-campus program sites.

(14) **University official.** Any person employed or contracted by the university, who is performing assigned teaching, administrative, or professional responsibilities. University officials may be full- or part-time, and may include student staff members.

(15) **University property.** All land, buildings, facilities, and other property that is owned, used, leased, or controlled by Western Washington University. University property also includes adjacent streets and sidewalks.

(16) **WAC.** An abbreviation for the Washington Administrative Code.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-030 Jurisdiction.** (1) The student ~~((rights and responsibilities))~~ conduct code applies to all conduct that occurs on university property or in connection with any official university function.

(2) Western Washington University does not act as a policing agent for students when they are off campus. However, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest. Student conduct that occurs off campus may be subject to the student ~~((rights and responsibilities))~~ conduct code when it:

(a) Adversely affects the safety or well-being of any member of the university community; or

(b) Involves academic work or any records, documents, or identifications of the university.

In determining whether to exercise jurisdiction over such conduct, the student conduct officer shall consider the seriousness of the alleged offense, the risk of harm involved, and whether the alleged victim(s) are members of the university community. Any question of interpretation or application of jurisdiction shall be referred to the dean of students for final determination.

(3) Students are responsible for their conduct from the time they have confirmed their enrollment at Western through the awarding of their degree. This includes conduct that occurs before classes begin, after classes end, and during periods between actual terms of enrollment. Students who are found to be in violation of the code may be subject to sanctions under the code.

(4) A student with a pending conduct violation may not avoid the conduct process by withdrawing from the university. In these circumstances, a conduct hold will be placed on the student's official record, preventing them from registering for classes, requesting an official transcript, or receiving a degree from the university. This hold will remain in place until the student has met with the conduct officer to discuss the alleged conduct violation(s).

(5) Sanctions against student organizations are decided by procedures established by the university administrative unit governing that organization's recognition. Conduct pro-

ceedings against individual member(s) of a student organization can be initiated under this code, independent of any departmental action(s) taken against the student organization.

#### NEW SECTION

**WAC 516-21-055 Amnesty.** (1) In situations involving intoxication, alcohol poisoning, or drug-related medical issues, students are encouraged to seek swift medical assistance for themselves and others without fear of penalty. Students requesting and receiving medical assistance in these situations will not typically be subject to the formal student conduct process. This policy refers to isolated incidents and does not excuse students who repeatedly or flagrantly violate the alcohol or drug policy, nor does it preclude action arising from other violations of the code. Western will consider the positive impact of reporting a situation when determining any course of action.

(2) Complainants and witnesses who in good faith report sexual violence will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual violence unless their own conduct placed another person's health or safety at risk. Without imposing sanctions, Western may initiate educational remedies regarding alcohol or drug use.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-060 Conduct that harms or threatens health or safety.** Conduct that harms, attempts to harm, or threatens the health or safety of any ((person, including one-self, is a violation of the code. Conduct that threatens health or safety)) member of the Western community by any means (e.g., in person, through any party, online) is a violation of the code. This includes, but is not limited to:

(1) ((Intoxication or impairment through the use of alcohol or other substances to the point that a student is unable to exercise care for his/her own safety or well-being.)) Physical assault.

(2) Any threat, stated or implied, to the health, safety or well-being of self or others.

(3) Any contact or communication of a threatening nature that intimidates, harasses, ((or causes a)) and would cause a reasonable person to fear for their safety or well-being.

(4) ((Incidents involving the use or display of a weapon or destructive device likely to cause bodily injury and/or damage to property.)) Intoxication or impairment through the use of alcohol or other substances to the point that a student is unable to exercise care for their own safety or well-being.

(5) Sexual violence including sexual assault, dating violence, domestic violence, and stalking. See WAC 516-21-180 Sexual misconduct, WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment), WAC 516-21-115 Discrimination and discriminatory harassment, WAC 516-21-188 Stalking, WAC 516-21-186 Domestic violence, WAC 516-21-184 Dating violence, and WAC 516-21-055 Amnesty.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment).** ((Harassment, defined as any conduct that is sufficiently severe, pervasive, or persistent to have the purpose or effect of interfering with a member of the university community's ability to work, study, or participate in their regular activities, is a violation of the code. Examples of harassment include, but are not limited to:

(1) Engaging in unwanted contact or communication, including calls, voice messages, electronic mail, text messages, social media posts or messages, written letters, unwanted gifts, or face to face contact with a member of the university community;

(2) Repeatedly following a member of the university community; waiting outside their residence, school, or place of employment; or placing them under any form of surveillance; and

(3) Engaging in any form of behavior that is meant to threaten or intimidate a member of the university community based on their membership in a protected class, including race, color, creed, religion, national origin, sex, age, disability, marital status, genetic information, status as a veteran, and/or sexual orientation.)) Harassment is conduct by any means that is severe, persistent, or pervasive, and is of such a nature that it would cause a reasonable person in the victim's position substantial emotional distress and undermines their ability to work, study, or participate in their regular life activities or participate in the activities of the university, and/or actually does cause the victim substantial emotional distress and undermines the victim's ability to work, study, or participate in the victim's regular life activities or participate in the activities of the university.

#### NEW SECTION

**WAC 516-21-115 Discrimination and discriminatory harassment.** Discrimination or discriminatory harassment on the basis of race; sex/gender; sexual orientation; gender identity/expression; religion; age; color; creed; national or ethnic origin; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); marital status; genetic information; and/or status as an honorably discharged veteran or member of the military; and as defined in Western Washington University's Policy U1600.02, which prohibits discrimination, sexual harassment, and sexual misconduct. Anyone complaining or involved in a complaint of discrimination is protected against retaliation, see definition in University Policy U1600.02 and 04.

(1) Sexual harassment is a violation of the code. Sexual harassment is unwelcome conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, electronic, or physical conduct of a sexual nature, when:

(a) It has a tangible impact on a student's education including, but not limited to, academic grades, living environment, participation in a university activity; or

(b) It is sufficiently severe, pervasive, or persistent to interfere with a member of the university community's ability to work, study, or participate in their regular activities, or benefit from the university's programs or activities and creates a hostile environment.

(2) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes, and is a violation of the code. Gender-based harassment violates this code when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(3) Sexual violence includes sexual assault, dating violence, domestic violence, and stalking; see WAC 516-21-180 Sexual misconduct, WAC 516-21-060 Conduct that harms or threatens, WAC 516-21-188 Stalking, WAC 516-21-186 Domestic violence, and WAC 516-21-184 Dating violence.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-130 ((Illegal possession and/or use of) Alcohol.** ((Illegally possessing, using, distributing, selling, or being under the influence of alcohol while on university property or at an official university function is a violation of the code. This includes, but is not limited to:

(1) Possession or consumption of alcohol by anyone under the age of twenty-one;

(2) Providing alcohol to anyone under the age of twenty-one;

(3) Driving on university property while under the influence of alcohol; and

(4) Public intoxication by persons of any age. See also policy concerning alcohol and other drugs in the catalog.)) Except as permitted by law (e.g., possession or use by a person of legal age) and/or university policy, the possession, use, distribution, or sale of alcohol while on university property or at an official university function is a violation of the code. See also *Policy Concerning Alcohol and Other Drugs* in the appendices section of the university catalog.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-140 ((Illegal possession and/or use of) Drugs and paraphernalia.** ((Illegally possessing, using, manufacturing, cultivating, packaging, distributing, selling, or providing a controlled or illegal substance, or being under the influence of a controlled or illegal substance while on university property or at an official university function, is a violation of the code. This includes, but is not limited to:

(1) Possession of drug paraphernalia;

(2) Driving on university property while under the influence of a controlled or illegal substance; and

(3) Intentionally misusing or distributing prescription drugs. See also policy concerning alcohol and other drugs in the catalog.)) Except as permitted by law and university policy, the possession, use, cultivation, manufacturing, packaging, distribution, or provision of a controlled or illegal substance and the possession of drug paraphernalia while on uni-

versity property or at an official university function is a violation of the code. This code violation also includes the intentional misuse or distribution of prescription drugs. See also *Policy Concerning Alcohol and Other Drugs* in the appendices section of the university catalog.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-150 Interfering with the conduct process.** Interfering with the conduct process is a violation of the code. This includes, but is not limited to:

(1) Giving a false report or claim;

(2) Attempting to influence the impartiality of witnesses or ((appeals)) review board member(s);

(3) Participating in or encouraging ((retribution)) retaliation against complainants or witnesses;

(4) Threatening, harassing, or intimidating complainants or witnesses;

(5) Disrupting or interfering with the orderly conduct of a hearing or meeting; and

(6) Failing to comply with any sanction(s) imposed as the result of a code violation.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-180 Sexual misconduct.** ((~~(1) Sexual misconduct, defined as any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, or coercion, is a violation of the code. Sexual misconduct includes, but is not limited to:~~

(a) Sexual harassment (e.g., engaging in unwelcome verbal, written, or physical behavior of a sexual nature that is directed at another person or group, based on that person or group's sex, gender, or perceived sex or gender);

(b) Sexual intimidation (e.g., engaging in any behavior, either verbal or nonverbal, that has the effect of subjecting another person to humiliation, embarrassment, or discomfort because of their sex, gender, or perceived sex or gender);

(c) Sexual coercion (e.g., engaging in the use of pressure, alcohol or drugs, or force to compel or persuade another person to engage in sexual activity);

(d) Sexual exploitation (e.g., engaging in voyeurism or peeping, distributing intimate or sexual information about another person without that person's consent, knowingly transmitting an STD or HIV to another person, or engaging in any behavior that takes sexual advantage of another person without that person's consent);

(e) Sexual assault (e.g., engaging in actual or attempted sexual touching, genital oral contact, penetration, and/or intercourse without consent).

(2) Consent for all sexual activity must be given free of force, threat, intimidation, or coercion. At the time of the sexual activity, actual words or conduct demonstrating freely given agreement must occur; silence or passivity do not imply consent. Activity of a sexual nature is considered non-consensual when:

(a) An individual is asleep, unconscious, or otherwise physically unable to communicate his or her willingness or unwillingness to engage in sexual activity;



(b) An individual lacks the ability, at the time of sexual activity, to be able to understand the nature or consequences of the activity, whether due to illness; impairment; the influence of alcohol, drugs, or medication; or another cause; or

(c) An individual is not of legal age to give consent.

(3) Sexual misconduct represents a range of behavior; it can occur between strangers or acquaintances, including individuals involved in an intimate or sexual relationship. Sexual misconduct can also be committed by individuals of any gender and can occur between people of the same or different sex. See also sexual misconduct policy and procedure in the catalog.) Sexual misconduct is a violation of the code and includes nonconsensual sexual contact, sexual exploitation and sexual violence (sexual assault, dating violence, domestic violence, and stalking). See also WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment), WAC 516-21-115 Discrimination or discriminatory harassment, WAC 516-21-060 Conduct that harms or threatens, WAC 516-21-188 Stalking, WAC 516-21-184 Dating violence, and WAC 516-21-186 Domestic violence.

(1) Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, actual words or conduct demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is not consent. Consent is ongoing and can be withdrawn at any time. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another. When an individual makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail, extortion, or a position of power to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity; or

(c) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if they cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or they lack the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(2) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by

one person against another person's intimate parts (genitals or genital area, breast or buttock (clothed or unclothed). This includes any intentional bodily contact of one's own intimate area with another person.

(3) Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above.

(4) Sexual assault is attempted or actual nonconsensual penetration, no matter how slight, of another's vagina, anus or mouth by a penis; or the vagina or anus by any body part or object.

(5) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

(6) Sexual misconduct represents a range of behavior; it can occur between strangers or acquaintances, including individuals involved in an intimate or sexual relationship. Sexual misconduct can be committed by individuals or groups of individuals directed to one or more people and can occur between people of the same or different sex. See also *University Policy U1600.04 Preventing and Responding to Sex Discrimination, Including Sexual Misconduct.*

#### NEW SECTION

**WAC 516-21-184 Dating violence.** Conduct by a student who is or has been in a romantic or intimate relationship with another that intentionally, or recklessly, causes bodily injury or places another in reasonable fear of serious bodily injury is a violation of the code. The nature of the relationship is determined by the length, type, and frequency of interaction between them. Sexual violence includes sexual assault, dating violence, domestic violence, and stalking. See also WAC 516-21-180 Sexual misconduct, WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment), WAC 516-21-115 Discrimination or discriminatory harassment, WAC 516-21-060 Conduct that harms or threatens, WAC 516-21-188 Stalking, and WAC 516-21-186 Domestic violence.

#### NEW SECTION

**WAC 516-21-186 Domestic violence.** Conduct by a current or former spouse or intimate partner (including between two people that share a child in common) that intentionally, or recklessly, causes bodily injury, or causes another to be in reasonable fear of serious bodily injury is a violation of the code. Sexual violence includes sexual assault, dating violence, domestic violence, and stalking. See also WAC 516-21-180 Sexual misconduct, WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment), WAC 516-21-115 Discrimination or discriminatory harassment, WAC 516-21-060 Conduct that harms or threatens, WAC 516-21-188 Stalking, and WAC 516-21-184 Dating violence.

NEW SECTION

**WAC 516-21-188 Stalking.** Engaging in a course of unwelcomed conduct (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property) directed at a specific person that would cause a reasonable person to fear for their safety, or the safety of others, or suffer substantial emotional distress, is a violation of the code. Stalking includes, but is not limited to, conduct occurring in person, electronically, and/or through a third party.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-190 Student violation of the law.** Students are expected to abide by all local, state, and federal laws while on campus or at official university functions. Failure to comply with these laws is a violation of the code.

While Western does not act as a policing agent for students when they are off campus, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest (~~See also~~) as set forth in WAC 516-21-030 Jurisdiction.

Proceedings under the code may be carried out prior to, simultaneously, or following civil or criminal proceedings in the courts. Since the standard of proof under the code (preponderance of evidence) differs from that of criminal law, decisions made through the student conduct process are not subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced by a court of law.

NEW SECTION

**WAC 516-21-195 Notification of criminal arrest.** Failure by the student to notify the dean of students of any off-campus felony arrest, or when the arrest is for an offense that is violent, weapons-related, involves kidnapping, or requires that the student register as a sex offender by any legal authority within the U.S., is a violation of the code. The university may send a letter to the student requiring that they make an appointment for an interview. During this interview, the dean of students or their designee shall discuss with the student:

- (1) The facts involved in the student's arrest;
- (2) The student's obligation to keep the university informed of the progress of any criminal charge(s);
- (3) The student's obligation to advise the university of the final disposition of any criminal charge(s); and
- (4) Whether the behavior falls under jurisdiction of the student code.

The university will cooperate with law enforcement and other agencies administering a corrective or rehabilitative program for the student. See also *POL-U5620.02 Notifying Campus Community About Sex and Kidnapping Offenders*.

NEW SECTION

**WAC 516-21-215 Violation of university policy, rule, or regulation.** Violation of any published university policy, rule, or regulation is a violation of the code.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-220 Weapons and destructive devices.** Possession, use, unauthorized storage, or manufacture of firearms, ammunition, explosives, or other weapons or destructive devices capable of causing bodily injury or damage to property, on university property or at official university functions, is a violation of the code. Weapons and destructive devices include, but are not limited to, the unauthorized use or possession of:

(1) Firearms or projectile devices of any kind, including BB, pellet, paintball, and airsoft guns, bow and arrow, and sling shots;

(2) Martial arts weapons of any kind, including nunchucks, swords, or throwing stars;

(3) Fireworks of any kind (~~including firecrackers, cherry bombs, or homemade explosives~~);

(4) (~~Projectile devices of any kind, including catapults or slingshots~~) Dangerous chemicals;

(5) Any knife with a blade longer than three inches (excluding kitchen utensils); and

(6) (~~Any object that can be used as a weapon to cause bodily injury or damage to property~~) Weapons classified as dangerous in RCW 9.41.250.

This does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

See also WAC 516-52-020 Firearms and dangerous weapons.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-240 Student conduct system.** (1) The vice-president for enrollment and student services is responsible for administration of the code. Supervision of the code has been delegated by the vice-president to the dean of students.

(2) (~~The~~) A conduct officer(s) shall be appointed and supervised by the dean of students or (~~his/her~~) their authorized designee. (~~The~~) A conduct officer has the authority to (~~adjudicate~~) consider complaints, make findings, and administer sanctions for violations of the code. In complaints of sexual violence, including sexual harassment, misconduct, or assault, an investigation and written report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation.

(3) (~~A six-member appeals board shall be appointed at the beginning of each fall term to consider reviews of the conduct officer's findings and decision. The appeals board shall include:~~) Review board members shall be appointed to consider appeals of a conduct officer's findings and sanctions. Review board members shall include a pool of the following:

(a) (~~Two~~) Four faculty members, appointed by the faculty senate;

(b) (~~Three~~) Six student members, appointed by the associated students board of directors and/or residence hall association. Student board members must have:

- (i) A cumulative grade point average above 2.0;
- (ii) Not currently be under an active sanction of the conduct code or have had previous conduct violations during the current academic year; and
- (iii) Be confirmed by the dean of students; and
- (c) ~~((One))~~ Four staff members, generally but not exclusively from the division of enrollment and student services, ~~((nominated))~~ confirmed by the dean of students ~~((and confirmed by the vice president for enrollment and student services.~~

(4) Alternates will be identified for each area represented on the appeals board. Student appointments are for one academic year. Faculty and staff appointments are for two-year staggered terms.

(5) All appointments to the committee shall be initiated during the first full month of the fall term. Should a request for a review of the conduct officer's findings and decision come forward during the summer term or during other break periods, the review will be heard by the dean of students or by an interim appeals board appointed by the dean of students.

(6) Both the appeals board and the dean of students have full authority to render a decision under the code. All review decisions are final).

(4) A review board shall be comprised of five members and any three persons constitute a quorum of a board. Generally a review board will be comprised of faculty, staff, and students, but in some instances may only be comprised of members from two of the three groups. The dean of students, or their designee, will appoint a chair from this pool for each board. Board members may not have been involved in consideration of the complaint, or involved in the complaint. All board members must be properly trained in the conduct process. The dean of students or their designee will have final authority to approve all of those serving on a board. The dean of students, or their designee, will work to ensure that any board is balanced and representative.

(5) A staff member appointed by the dean of students may advise the board on technical details of the code and its procedures.

(6) Conduct officers, the review board, and the dean of students or authorized designees have full authority to administer a decision under the code.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-250 Student rights in the conduct process.** ~~((A))~~ Alleged violations of the code will be resolved through the student conduct process, respecting fairness and due process for all involved parties.

(1) A student((s)) accused of violating the code ((have)), known as the respondent, has certain rights in the conduct process. These include the right to:

(a) ~~((Receive written notification of the section(s) of the code they are alleged to have violated, including a clear description of the basis for the charge(s), delivered via e-mail to the student's official @students.wvu.edu account;~~

(b) ~~Meet with the conduct officer to discuss the section(s) of the code they are alleged to have violated and present a response to such allegations;~~

~~((e)) Receive prior written notice to attend meetings with a conduct officer or hearings with a review board delivered via e-mail to the student's official university e-mail account;~~

(b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

~~((d))~~ (c) Be accompanied through the conduct process by ~~((a person))~~ an advisor of their choice ~~((this person))~~ and at their own expense. The advisor may give advice to the student, but may not directly address the conduct officer, any member of the ~~((appeals))~~ review board, or the dean of students(~~;~~

~~((e) Refuse to answer any question asked of them and have no inference of guilt drawn from such refusal).~~ A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;

(d) Remain silent or decline to respond to any question(s) during any conduct meeting or hearing;

(e) Review information relied upon by the conduct officer or review board in making a determination;

(f) Receive written notification of the ~~((conduct officer's))~~ findings ~~((and)),~~ decision, and basis for each, delivered via e-mail to the student's official ~~((@students.wvu.edu))~~ university e-mail account, within seven business days of the date of ~~((the))~~ a meeting with a conduct officer, or ten business days of the date of a hearing with a review board (or, if multiple meetings are necessary to determine responsibility or multiple individuals are involved and information presented by each is deemed necessary to determine responsibility, within seven or ten business days of the date of the final meeting for the specific incident);

(g) Request a review of ~~((the conduct officer's findings and decision by the appeals board or dean of students))~~ a decision by a conduct officer, as described in WAC 516-21-280 Basis for review; ~~((and))~~

(h) Request an appeal of a decision that results in suspension or expulsion, as described in WAC 516-21-280 Basis for review; and

(i) Waive any of the rights contained in this section.

(2) An individual((s)) who ~~((have))~~ has filed a complaint ~~((or are the victim of an alleged violation of the code have))~~ alleging violence or sexual violence, including harassment, misconduct, and/or assault, known as the complainant, has certain rights in the conduct process. These include the right to:

(a) ~~((Submit a written account of the alleged violation(s));~~  
(b) ~~Be advised of the date, time, and location of the hearing;~~

~~((e))~~ Receive prior written notice to attend meetings with a conduct officer or hearings with a review board delivered via e-mail to the student's official university e-mail account;

(b) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

~~((d))~~ (c) Be accompanied through the conduct process by ~~((a person))~~ an advisor of their choice ~~((this person))~~ and at their own expense. The advisor may give advice to the student, but may not directly address the conduct officer, any

member of ~~((the appeals))~~ a review board, or the dean of students~~(s)~~;

~~(e) Be free of any form of retaliation and report any retaliation that occurs for further action;~~

~~(f) Have past unrelated behavior excluded from the investigation or hearing; and~~

~~(g) Submit an oral or written impact statement to the conduct officer, appeals board, or dean of students, for consideration during the sanctioning phase of the conduct process, if the charged student is found responsible)). A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay;~~

~~(d) Remain silent or decline to respond to any question(s) during the conduct meeting;~~

~~(e) Review information relied upon by the conduct officer or review board in making a determination;~~

~~(f) Receive written notification of the findings, decision and basis for each, delivered via e-mail to the student's official university e-mail account, within seven business days of the date of a meeting with a conduct officer or ten business days of the date of a hearing with a review board, or if multiple meetings are necessary to determine responsibility or multiple individuals are involved and information presented by each is deemed necessary to determine responsibility, within seven or ten business days of the date of the final meeting for the specific incident;~~

~~(g) Request a review of a decision by a conduct officer, as described in WAC 516-21-280 Basis for review;~~

~~(h) Request an appeal of a decision that may have resulted in a suspension or expulsion, as described in WAC 516-21-280 Basis for review; and~~

~~(i) Waive any of the rights contained in this section.~~

(3) For incidents involving violence or sexual violence, including sexual harassment, misconduct, and/or assault, ~~((victims))~~ complainants shall have the following additional rights:

~~(a) To be notified of the availability of counseling, academic support, and general assistance((s)) and support resources, both on campus and in the surrounding community;~~

~~(b) ((To request and be granted a "no contact" order against the accused student(s));~~

~~(c) To receive written notification of the conduct officer's findings and decision delivered via e-mail to the student's official @students.wvu.edu account, within seven business days of the date of the meeting (or, if multiple meetings are necessary to determine responsibility or multiple individuals are involved and information presented by each is deemed necessary to determine responsibility, within seven business days of the date of the final meeting for the specific incident); and~~

~~(d) To request a review of the conduct officer's findings and decision by the appeals board or dean of students, as described in WAC 516-21-280 Basis for review.)) Have past behavior unrelated to the alleged behavior excluded from the hearing or review; the presiding officer or dean of students will make a final determination regarding such behavior if in question;~~

(c) To be free from questioning about their sexual history involving anyone other than the respondent;

(d) Submit an oral or written impact statement to the conduct officer, and/or review board, and/or dean of students (if applicable), for consideration;

(e) To request an administrative no contact order against the respondent(s) during the conduct process; and

(f) Be free of any form of retaliation. Complainants should report any retaliation that occurs for further action. See POL-U1600.02 Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-260 Procedures for immediate interim suspension.** In consultation with university officials, the dean of students may suspend a student from the university on an immediate interim basis, pending disciplinary or criminal proceedings or a medical evaluation.

(1) An interim suspension may only be imposed in the following circumstances:

(a) The student poses a threat to ~~((his/her))~~ their own safety or well-being;

(b) The student poses a threat to the safety or well-being of other members of the university community;

(c) The student poses a threat to university property, is disrupting, or interfering with the normal operations of the university; ~~((and))~~ or

(d) The student is alleged to have committed a serious violation of local, state, or federal law.

(2) During the interim suspension, a student may be denied access to university activities and privileges, including access to classes, university property, and/or campus residence halls and apartments.

(3) A student suspended from the university on an immediate interim basis shall be notified in writing of the terms of the interim suspension. The notice, which shall be delivered ~~((both))~~ via e-mail to the student's official ~~((@students.wvu.edu))~~ university account and ~~((via certified mail to the student's local address on file))~~ in person if possible, shall include the stated violation(s), the circumstances and terms of the interim suspension, and the time, date and location of a meeting to discuss the interim suspension with the dean of students.

(4) The interim suspension meeting shall occur no less than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. The purpose of the interim suspension meeting is for the student to have an opportunity to demonstrate to the dean of students why the terms specified in the interim suspension notice should not continue.

(5) Cases of interim suspension are given priority and will be expedited through the student conduct process. The interim suspension will remain in effect until a final decision has been made on the pending code violation(s) or until the dean of students determines that the reasons for imposing the interim suspension no longer exist or are not supported by available evidence.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-270 Proceedings for violations of the code.** ~~((1) Any member of the university community may file a complaint against a student or a student organization, alleging a violation of the code. All complaints should be provided in writing to the conduct officer or dean of students and include a statement of the alleged misconduct.~~

~~(2) The conduct officer will conduct a preliminary investigation. If, in the conduct officer's judgment, there is insufficient basis to consider a charge, the individual(s) initiating the complaint will be informed. If there is sufficient basis to consider a charge, the conduct officer shall:~~

~~(a) Provide the accused student with a written notice of the charge(s), delivered via e-mail to the student's official @students.wvu.edu account. This notice shall include a clear description of the nature and date of the complaint and the specific code section(s) the student is alleged to have violated;~~

~~(b) Provide the accused student with a copy of the code as well as information on the availability of procedural advice regarding the code; and~~

~~(c) Provide the accused student with written notice to contact the dean of students' office immediately upon receipt of the charge letter to schedule a conduct meeting. This meeting should occur no less than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon.~~

~~(3) During the meeting with the accused student, the conduct officer will determine, based on a preponderance of evidence, whether it is more likely than not that a violation of the code has occurred. If a student fails to meet with the conduct officer after receiving proper notification, a decision on the allegation(s) may be rendered in the student's absence.~~

~~(4) Within seven business days of the meeting, the conduct officer shall notify the student in writing of the findings and decision, including any imposed sanctions. This notification will be delivered via e-mail to the student's official @students.wvu.edu account and will include a statement of the student's option for a review of the conduct officer's findings and decision by the appeals board or the dean of students.~~

~~(5) If multiple meetings are required to determine responsibility, the findings and decision letter will be sent via e-mail to the student's official @students.wvu.edu account no later than seven business days after the final meeting for the specific incident.~~

~~(6) If multiple individuals are involved in the incident and the information presented by each student is deemed necessary to determine responsibility, individual findings and decision letters will be sent via e-mail to the student's official @students.wvu.edu account no later than seven business days after the final meeting for the specific incident.~~

~~(7) If both parties agree to mediate a complaint and the conduct officer agrees, mediation may be substituted for a conduct meeting. If mediation is unsuccessful, the original complaint will be considered and decided upon by the conduct officer. Mediation may not be substituted for a conduct meeting in cases involving violence or sexual violence,~~

~~including sexual harassment, misconduct, or assault.)) (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered as a complaint.~~

~~(2) After a consideration of the complaint, the conduct officer may take any of the following actions:~~

~~(a) Review the complaint, investigate and make a finding whether the code was violated and imposes sanction(s);~~

~~(b) Terminate the proceeding and enter a finding that there is no violation of the code and/or that the respondent is not responsible for the alleged conduct violation; or~~

~~(c) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises.~~

~~(3) In complaints of sexual violence, including sexual harassment, misconduct or assault, an investigation and written report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).~~

~~(4) Any student charged by a conduct officer with a violation of the student code is provided at least three days written notice of the student's meeting date, time and location. Any request to extend the time and/or date of the conduct officer meeting should be addressed to the conduct officer. The written notice shall include:~~

~~(a) A brief summary of the complaint, including the sections of the code allegedly violated;~~

~~(b) The approximate time and place of the alleged behavior that forms the factual basis for the charge of violation;~~

~~(c) The time, date, and place of the meeting;~~

~~(d) A copy of, or link to, the code.~~

~~(5) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer, including the basis for any findings and sanctions. The notice includes information regarding the right to request a review.~~

~~(6) All notifications under the code are delivered by electronic mail to the students' university e-mail account. Any notifications sent via regular U.S. mail (for instance, to students not currently enrolled) may be sent to the party's last known address or the address on file with the university registrar. Students are responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in the code begin the date the notification is sent via electronic means.~~

~~(7) Upon request to the dean of students office, staff will be available to the respondent and complainant (if applicable) to assist in understanding the student conduct process.~~

~~(8) The conduct officer's determinations and findings are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the respondent violated the code.~~

~~(9) Relevant evidence is admissible if it is the type of evidence that reasonable members of the university commu-~~

nity would rely upon in the conduct of their affairs. The conduct officer, or review board chair, shall have the discretion to determine admissibility of evidence.

(10) If respondent or complainant (if applicable) to whom notice of a meeting or hearing has been sent does not appear before a conduct officer or review board, the complaint is considered in their absence, and the conduct officer or review board may issue a decision based upon that information.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-280 Basis for review.** ~~((1) A student found in violation of the code may request a review of the conduct officer's findings and decision by either the appeals board or the dean of students. A review may be requested for the following reasons only:~~

~~(a) The original meeting was not conducted in conformity with prescribed procedures;~~

~~(b) The conduct officer misinterpreted the code;~~

~~(c) The sanctions imposed are disproportionate to the violation(s) committed; and~~

~~(d) The decision reached did not properly consider the information presented.~~

~~(2) For incidents involving violence or sexual violence, including sexual harassment, misconduct or assault, victims may request a review of the conduct officer's findings and decision by either the appeals board or the dean of students. A review may be requested for the following reasons only:~~

~~(a) The original meeting was not conducted in conformity with prescribed procedures;~~

~~(b) The conduct officer misinterpreted the code;~~

~~(c) The sanctions imposed are disproportionate to the violation(s) committed; and~~

~~(d) The decision reached did not properly consider the information presented.~~

~~(3) The request for review must be submitted in writing to the dean of students within seven business days of receipt of the conduct officer's written notice of findings and decision (which shall be delivered via e-mail to the student's official @students.wvu.edu account). The request must state, as clearly and concisely as possible, the basis for the review and specify whether the student wishes to have their review considered by the appeals board or the dean of students.~~

~~(4) Upon receipt of the written request for review, the dean of students will determine whether the request meets one or more of the criteria specified for reviews of the conduct officer's findings and decision. If it does, the review hearing will be scheduled. If it does not, the party requesting the review will be notified in writing and the request will be denied.~~

~~(5) For incidents involving violence or sexual violence, including sexual harassment, misconduct or assault, both the student found in violation of the code and the victim will be notified in writing regarding the outcome of the written request for review.~~

~~(6) No sanction will begin while a review is pending, except as provided in WAC 516-21-260, Procedures for immediate interim suspension. Temporary relocation of a~~

~~student to alternative housing and/or restrictions between affected parties may be enforced during an appeal.)~~ (1) A student found in violation of the code may request a review of the conduct officer's findings and/or the sanctions imposed. For incidents involving violence and/or sexual violence, including sexual harassment, misconduct or assault, a complainant may also request a review. A review may be requested for any reason including:

(a) The proceedings were not conducted in conformity with prescribed procedures and significantly impacted the outcome of the student conduct process;

(b) The sanctions imposed are substantially disproportionate to the violation(s) committed;

(c) The decision reached did not properly consider the information presented; and/or

(d) New information becomes available that was unavailable at the time of the original meeting, and could substantially impact the original decision (a summary of this new information and its potential impact must be included).

(2) The request for review must be submitted by the respondent or complainant (if applicable) in writing to the dean of students within twenty-one calendar days of the decision. The request for review must state, as clearly and concisely as possible, the basis for the request.

(3) Requests for review of a finding that resulted, or may have resulted, in suspension or expulsion are considered by a review board. All other requests for review are considered by the dean of students as a brief adjudicative proceeding.

(4) No sanction will begin while a request for review or appeal is pending, except interim sanctions such as administrative no-contact orders, trespass, etc.

**AMENDATORY SECTION** (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-290 Review procedures.** ~~((1) Upon acceptance of a request for review, the dean of students shall notify the student (or, for incidents involving violence or sexual violence, both the student and the victim) in writing of the:~~

~~(a) Section(s) of the code the student was found to have violated;~~

~~(b) Findings and decision of the conduct officer;~~

~~(c) Time, date, and location of the review hearing; and~~

~~(d) Location of the code, should they wish to view or download a copy.~~

~~(2) The review hearing shall be held no less than three business days and no more than seven business days from the date of notification. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. If the student fails to appear at the hearing, the appeals board or the dean of students may proceed with the review, based upon consideration of all available information, or may dismiss the request for review.~~

~~(3) During the review hearing:~~

~~(a) The chair of the appeals board or dean of students may ask any person with relevant information to speak or provide a written statement regarding the alleged violation.~~

~~(b) The student found in violation of the code may ask any person with relevant information to speak or provide a written statement regarding the alleged violation.~~

~~(c) The chair of the appeals board or the dean of students may limit or exclude information that is considered to be irrelevant, immaterial, or repetitious.~~

~~(d) Five members shall constitute a quorum of the appeals board. Actions by the appeals board require agreement by a majority of members present at the time of the hearing.~~

~~(e) Any member of the appeals board that is unable to render an impartial decision in a particular case shall excuse themselves from the appeals board's deliberations in advance and may be replaced by an alternate.~~

~~(f) The appeals board or the dean of students may either confirm, reverse, or modify the conduct officer's findings and decision.~~

~~(4) New substantive information that was not presented at the time of the original conduct meeting will not be considered during the review. When new substantive information is present prior to or during the review hearing and such evidence could impact the original decision, the allegation(s) will be reheard by the conduct officer.~~

~~(5) The chair of the appeals board or the dean of students will render a decision regarding the review within seven business days of the hearing and notify the student (or, for incidents involving violence or sexual violence, both the student and the victim) in writing of their findings and decision. All review decisions are final.)~~ (1) Requests for review can be made by the respondent or complainant (in incidents involving violence and/or sexual violence, including sexual harassment, misconduct or assault) and must be made to the dean of students.

(2) The dean of students or their designee reviews the request.

(3) Where new information, unavailable at the time of the original meeting, that could substantially impact the original decision, is received, the dean of students or their designee may refer the complaint back to the original conduct officer for reconsideration. The dean of students or their designee may, at their discretion, refer the complaint to a different conduct officer for reconsideration.

(4) In most requests for review, except in brief adjudicative proceedings, the dean of students or their designee will review the written documentation only; any involved person (respondent, witnesses, complainant) may be called if necessary and at the discretion of the dean of students or their designee.

(5) In requests for review in which the possible or recommended sanction is expulsion or suspension as determined by the conduct officer, a board considers the request for review.

(a) The review board will provide respondent and complainant (if applicable) with five days' notice of a review hearing date, time and location. The request for review by respondent or complainant will be shared with the other party (parties).

(b) The review board meets in private and reviews the complaint, the results of the subsequent investigation and its findings, and the conduct officer's decision. The board pro-

vides an opportunity for respondent and complainant (if applicable) to share information and call witnesses. The review board then deliberates in private.

(c) After a review by a board, the respondent and complainant (if applicable) may appeal the decision to the dean of students or designee. This appeal must be made in writing within twenty-one calendar days of the review board's written outcome. The dean of students or their designee will review the written documentation only; any involved person (respondent, witnesses, complainant) may be called if necessary and at the discretion of the dean of students or their designee.

(d) During limited times during the year, such as break periods and summer quarter, when board members are unavailable, an interim board may be appointed by the dean of students.

(6) Respondent and complainant (if applicable) will be informed of the outcome of reviews and/or appeals simultaneously and in writing in a timely manner.

(7) If there is no request for review received by the dean of students within twenty-one calendar days, the decision of the conduct officer is considered final. If there is no request for appeal of a board decision within twenty-one calendar days, the decision is considered final.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-300 Deviations from established procedures.** Deviations from the timelines set forth in this code may be granted by the dean of students, upon request, for good cause. Respondent (and complainant, if applicable) will be informed simultaneously and in writing of extensions and the reason for the extension.

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

**WAC 516-21-340 Revision of the code.** (1) The code shall be reviewed every five years or more often, if needed, by the committee on student rights and responsibilities. The committee on student rights and responsibilities shall include:

(a) Five students, including at least one graduate student. Three students shall be appointed by the associated students board of directors and two shall be appointed by the residence hall association;

(b) One faculty member, appointed by the faculty senate;

(c) One staff member from the division of enrollment and student services, appointed by the dean of students;

(d) One staff member from the department of public safety, appointed by the director of public safety;

(e) One staff member from university residences, appointed by the director of university residences; and

(f) The conduct officer.

(2) Recommendations of the committee on student rights and responsibilities shall be made to the vice-president for enrollment and student services for submission to and consideration by the president's cabinet. Prior to adoption of the code, all proposed modifications shall be reviewed by the office of the assistant attorney general at Western Washing-

ton University for consistency with university policies and the law. Final authority for changes to the code rests with the Western Washington University board of trustees. See also POL-U1000.00 *Developing and Maintaining University Provisions of the Washington Administrative Code.*

David Giglio  
for J. W. Unsworth  
Director

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 516-21-320 Relationship of the code to university residences.

**WSR 16-18-084**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-235—Filed September 6, 2016, 12:07 p.m., effective September 6, 2016, 12:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules on the Nisqually River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000N; 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 closing date was listed incorrectly in the 2016-17 Sport Fishing Rules pamphlet and the permanent Washington Administrative Code. The comanagers agreed to close the Nisqually River September 1 through November 15, 2016, to protect 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: September 6, 2016.

#### NEW SECTION

**WAC 220-310-19000N Freshwater exceptions to statewide rules—Puget Sound** Notwithstanding the provisions of WAC 220-310-190, effective immediately through November 15, 2016, it is unlawful to fish in waters of the Nisqually River from the mouth to military tank crossing bridge (located one mile upstream of mouth of Muck Creek).

#### REPEALER

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

WAC 220-310-19000N Freshwater exceptions to statewide rules—Nisqually River.

**WSR 16-18-089**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-238—Filed September 6, 2016, 6:23 p.m., effective September 6, 2016, 10:00 p.m.]

Effective Date of Rule: September 6, 2016, 10:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-49-05600C; and amending WAC 220-49-056.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 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 fish and wildlife commission have [has] taken action to implement a sixty thousand pound annual quota for the Puget Sound smelt commercial fishery. This emergency rule closes Puget Sound to commercial smelt fishing, as the annual quota is expected to be reached. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: September 6, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-49-05600C Puget Sound smelt commercial fishery—Seasons.** Notwithstanding the provisions of WAC 220-49-056, effective 10:00 p.m. September 6, 2016, through December 31, 2016, it is unlawful to take, fish for or possess smelt for commercial purposes in Puget Sound.

#### REPEALER

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

WAC 220-49-05600C Puget Sound smelt commercial fishery—Seasons.

**WSR 16-18-091**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed September 7, 2016, 8:52 a.m., effective September 10, 2016]

Effective Date of Rule: September 10, 2016.

Purpose: The department is adding two new sections to chapter 388-71 WAC, Home and community services and programs; amending one section in chapter 388-106 WAC, Long-term care services; and creating new chapter 388-114 WAC, Travel time and work week limitations for individual providers, as a result of the passage of E2SHB 1725.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-1458.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: E2SHB 1725.

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

Reasons for this Finding: The department is changing the definition of "family member" in WAC 388-114-0020 and making minor corrections in WAC 388-114-0040, 388-114-0050, and 388-114-0070. This CR-103E filing supersedes WSR 16-11-050 filed on May 13, 2016. The department is filing a CR-102 on September 7, 2016, for a public hearing on October 11, 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 16, 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 16, Amended 1, Repealed 0.

Date Adopted: August 29, 2016.

Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-71-0507 What responsibilities do clients have related to individual provider work week limits?** Clients must comply with WAC 388-114-0090.

#### NEW SECTION

**WAC 388-71-0518 What responsibilities do individual providers have related to work week limitation?** Individual providers must comply with WAC 388-114-0100.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

**WAC 388-106-1458 How do I create and use my spending plan?** (1) You create your spending plan with the assistance of the Care Consultant using the New Freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the Care Consultant.

(3) You and your Care Consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month). The value of those units is deducted from your New Freedom budget. The rest of funds can be used for other covered goods and services or saved.

(a) Once a service month begins, the number of personal care units may not be altered during that month.

(b) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

(c) Prior to the service month, you may elect to use savings funds to buy additional personal care.

(d) You can choose to have your personal care provided by an individual provider (IP) or a home care agency. Each unit will be deducted from your New Freedom budget at the average IP wage rate including mileage. Subsection (4) of this section describes when the department will be responsible for any extra costs for overtime payments to your individ-

ual provider and when you will have to pay the extra costs out of your monthly budget.

(e) The balance of your individual New Freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

(f) If you have a change of condition or situation and your New Freedom budget increases due to a new assessment or Exception to Rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

(g) You may assign your predetermined personal care units to a different provider during the month of service.

(4) The responsibility for paying the extra cost of overtime, which under chapter 388-114 WAC may be paid to providers who work as individual providers for one or more department clients when they work more than forty hours in a work week, is as follows:

(a) If the department approves the individual provider to work more than forty hours per week, the department will pay the extra cost for overtime up to the number of service hours the individual provider is approved to work and the payment for these extra costs will not be charged to your budget; and

(b) If you assign more overtime hours to your individual provider than the department approved, you are responsible for paying the extra costs for the unapproved overtime hours and the additional cost will impact your monthly budget and may reduce the number of service hours you are able to purchase from it.

### Chapter 388-114 WAC

#### TRAVEL TIME AND WORK WEEK LIMITATIONS FOR INDIVIDUAL PROVIDERS

##### NEW SECTION

**WAC 388-114-0010 What is the purpose of this chapter?** The purpose of this chapter is to describe:

- (1) The number of hours the department may approve an individual provider to work in a work week;
- (2) How the department determines work week limitations;
- (3) When the department may approve an individual provider to work more than the work week limit;
- (4) Client responsibilities regarding work week limits;
- (5) Individual provider responsibilities around work week limits;
- (6) What happens when a family or household member works more hours than are authorized in the client's plan of care;
- (7) What happens when an individual provider works more than the work week limit or submits claims for unauthorized travel time;
- (8) How the department approves and authorizes travel time; and
- (9) Travel time limitations.

##### NEW SECTION

**WAC 388-114-0020 What definitions apply to this chapter?** The following definitions apply to chapter 388-114 WAC:

**"Approve"** means the department, either in advance or after the fact, has reviewed the circumstances, applied the rules in this chapter, and has authorized the individual provider to work more than forty hours in a work week.

**"Family member"** includes, but is not limited to a parent, child, sibling, aunt, uncle, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

**"Household member"** means the individual provider lives with the client and has a relationship with the client that existed before the client was assessed and approved for department paid personal care services as defined in WAC 388-106-0010.

**"Overtime"** means the number of hours an individual provider works in a work week that is more than forty hours. When required by law, the overtime wage is one and one half times the individual provider's regular wage rate. Paid time off does not accrue as overtime pay.

**"Service hours"** means the time individual providers are paid by the department to provide personal care, relief care, skills acquisition training, or respite services under medicaid state plan and 1915(c) waiver programs, roads to community living, the veterans directed home services program, and programs solely funded by the state. Service hours do not include hours paid for training, travel, or paid time off.

**"Travel time"** is the direct one way travel time from one worksite to another in the same workday. Direct one way travel is the amount of time it takes to travel the most direct route between two specific worksites on the same day, as verified by using an online mapping tool.

**"Worksite"** is defined as the location where an individual provider provides authorized care to a department client or attends required training. An individual provider's residence is not a worksite for the purposes of travel time, whether or not the client lives there.

**"Work week"** begins at 12:00 a.m. Sunday morning and ends at 11:59 p.m. the following Saturday night.

**"Work week limit"** is the total number of service hours an individual provider can provide in a work week. Travel and training hours are not included in the work week limit.

##### NEW SECTION

**WAC 388-114-0030 How many hours may the department approve an individual provider to work in a work week?** (1) The department may not approve an individual provider to work more than a total of forty hours per work week, unless:

- (a) The individual provider has a higher work week limit as described under WAC 388-114-0040;
- (b) The authorization of additional hours would not exceed any expenditure limitations under RCW 74.39A.270 (10); and
- (c) The individual provider has a higher work week limit because:

(i) The department determined that the additional hours are necessary for the client for one of the reasons listed in WAC 388-114-0080;

(ii) It is allowable travel time as described in WAC 388-114-0130 and WAC 388-114-0140; or

(iii) The individual provider attends required training during the work week.

(2) The limitations of this section will apply to individual providers who were paid for one hundred and seventy-four or more service hours in January 2016 after the department reviews the plans of care for the individual provider's employers. The department will notify individual providers in this group of their work week limit once the department has completed the reviews.

#### NEW SECTION

**WAC 388-114-0040 How does the department determine an individual provider's work week limit?** (1) An individual provider's work week limit is forty service hours per week, unless the department approves a higher work week limit as described in this chapter.

(2) Subject to any expenditure limitations required by RCW 74.39A.270(10), if the department paid the individual provider for one hundred and seventy-four or more service hours of work in January 2016, the individual provider's work week is calculated by dividing the individual provider's January paid service hours by 4.33 and rounding to the nearest quarter hour. However, an individual provider's maximum work week limit cannot exceed sixty-five hours regardless of the number of service hours the individual provider worked in January 2016. Beginning July 1, 2017, the maximum work week limit will be reduced to sixty service hours.

#### NEW SECTION

**WAC 388-114-0050 What if the service hours the individual provider was paid for in January 2016 does not accurately represent the individual provider's work history in February and March 2016?** (1) If the individual provider's service hours paid in January 2016 do not accurately represent the individual provider's work history for the first three months of 2016, the individual provider may appeal the determination by submitting a request to the client's case manager by August 31, 2016.

(2) The department will consider an appeal if:

(a) The individual provider was contracted with the department;

(b) The individual provider was employed by a client in January 2016; and

(c) The total monthly service hours the individual provider was paid in January 2016 is less than the total monthly service hours the individual provider was paid in either February or March 2016 and the average in those months was above forty hours.

(3) The department will not consider an appeal request from an individual provider who was not contracted with the department or was not employed by a client in January 2016.

(4) The department will evaluate individual provider service hours appeals as follows:

(a) Calculate the individual provider's average number of weekly service hours paid in January 2016 by dividing the total January service hours paid by 4.33 which is the average number of weeks in a month;

(b) Calculate the average number of weekly service hours the individual provider was paid for February and March 2016 as follows:

(i) The average weekly service hours for February equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month;

(ii) The average weekly service hours for March equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month; and

(iii) Add the average weekly service hours for February and March 2016 together, and divide the total by two to get the average weekly service hours for February and March; and

(c) If the average weekly service hours for January 2016 is less than the average weekly service hours for February and March 2016, then the department will use the average weekly service hours for February and March 2016 as the individual provider's weekly service hour limit.

#### NEW SECTION

**WAC 388-114-0060 How will the client and individual provider know the individual provider's work week limit?** (1) The department will send a notification of the individual provider's work week limit, as determined under WAC 388-114-0040, to the individual provider and to the clients associated with the individual provider.

(2) The department will send a notification to the client and associated individual provider if the department approves additional service hours to the client under WAC 388-114-0080.

#### NEW SECTION

**WAC 388-114-0070 May an individual provider work more than his or her work week limit?** An individual provider with a work week limit of more than forty service hours has flexibility to work more than their work week limit in a given week if:

(1) Requested by the client to meet a specific need;

(2) Doing so would not exceed the client's monthly authorized hours;

(3) The total number of service hours worked over forty for each work week in a calendar month does not exceed the amount of overtime the individual provider would receive if he or she worked his or her work week limit every week of the calendar month; and

(4) The use of more service hours in a given week will not result in a client going without essential care in other weeks of the month.

#### NEW SECTION

**WAC 388-114-0080 When may the department approve an individual provider to work more than the work week limits in WAC 388-114-0030?** (1) In addition to the increased work week limits allowed under WAC 388-

114-0040, the department may approve additional service hours to an individual provider's work week limit if it finds the increase is necessary:

(a) Due to lack of available providers who are able to adequately meet a client's care needs, as evaluated by the department in its consideration of:

(i) The overall availability of providers in the geographic region;

(ii) Whether the client has complex medical or behavioral needs;

(iii) Whether the client requires a provider with specific language skills; and

(iv) The client's good faith efforts and cooperation to manage his or her service hours and locate and select additional providers, which must include:

(A) Making schedule adjustments within the work week limits of current providers who are providing your services;

(B) Seeking a qualified family or friend to contract as an individual provider;

(C) Utilizing the home care referral registry; and

(D) Requesting a worker through a home care agency, unless doing so would cost more than paying the individual provider overtime;

(b) To protect a client's health and safety, as evaluated by the department in its consideration of:

(i) Whether the request is to approve service hours the individual provider spent caring for the client because of an emergent condition;

(ii) The nature and severity of the emergent condition; and

(iii) Whether the need could have been postponed until another provider could have arrived;

(c) To serve the client's needs in the most efficient and economic manner; or

(d) To prevent an increased risk that the client will be unable to remain in a home or community based setting, except in cases where there are additional qualified providers available to select and the client has chosen not to select them.

(2) When a department approved increase to an individual provider's work week limit is no longer needed by the client, the individual provider's work week limit will revert to the level described in WAC 388-11-0040.

(3) The department will not approve additional service hours to an individual provider's work week limit that would exceed the client's monthly service hours limit or is more than eighty service hours per week for an individual provider.

#### NEW SECTION

**WAC 388-114-0090 How does the individual provider work week limits affect the client's responsibilities listed in WAC 388-70-0505?** In addition to the responsibilities detailed in WAC 388-71-0505, the client must:

(1) Manage his or her individual providers' work time to stay within each individual provider's total work week limit described in this chapter and within the total number of monthly authorized hours in the client's plan of care;

(2) Contact his or her case manager and participate in the search, selection, and hiring of additional providers when necessary to comply with subsection (1) of this section; and

(3) Choose a different provider when an individual provider is already working for one or more clients and the individual provider would exceed his or her work week limit by working for the client.

#### NEW SECTION

**WAC 388-114-0100 How does the individual provider work week limits affect the individual provider's responsibilities in WAC 388-71-0515?** In addition to the responsibilities detailed in WAC 388-71-0515, the individual provider must:

(1) Communicate and coordinate with each of his or her clients about how many service hours the individual provider is allowed and available to work each week; and

(2) Not accept assignments or changes in schedules for clients that would require the individual provider to work more than his or her work week limit unless it is to respond to an unexpected health or safety need of the client that cannot be postponed.

#### NEW SECTION

**WAC 388-114-0110 What happens when an individual provider, who is a family member or household member, provides more care or services than authorized in the client's plan of care?** The department will not pay an individual provider who is also a family or household member for care hours or services beyond the monthly authorized hours in the client's plan of care.

#### NEW SECTION

**WAC 388-114-0120 What happens if an individual provider works more service hours in a work week than the individual provider's work week limit or claims unapproved travel or service hours?** (1) If an individual provider works more service hours in a work week than the work week limit approved by the department or submits a claim for unapproved travel or service hours, the department may take any one or more of the following actions:

(a) Contact the individual provider to discuss the client's care needs and the individual provider's responsibilities under department rules and the individual provider's contract;

(b) Provide additional technical assistance to the individual provider and the client on how to comply with department rules and the individual provider contract;

(c) Give the individual provider and the client notice that continued failure by the individual provider to comply will result in termination of the individual provider's contract; and

(d) Terminate the individual provider's contract and assist the client in finding another individual provider.

(2) Individual providers do not have a right to an administrative hearing to appeal contract terminations under this section.

NEW SECTION

**WAC 388-114-0130 How is travel time approved and authorized?** (1) Individual providers must provide an estimate of planned travel time and request approval from the department in advance of travel. The reasonableness of the request may be verified by the department using an online mapping tool.

(2) Travel time is calculated based upon the actual time to travel directly between worksites during each work day and is rounded to the nearest fifteen minutes. If more than one trip between worksites is made in a day, direct travel times are added together and rounded to the nearest fifteen minutes once each day.

(3) Regardless of the estimated travel time, individual providers may only bill for actual time spent traveling as calculated in subsection (2) of this section.

(4) If the individual provider has unexpected or unplanned travel time, the individual provider must contact the department to request approval and authorization for payment of the unplanned travel. The department will approve unplanned travel time requests related to client health and safety or due to traffic conditions outside the individual provider's control.

NEW SECTION

**WAC 388-114-0140 Are there limitations on travel time?** The department will not approve an individual provider to provide care for a client if the department determines, based on an online mapping tool, that the individual provider would regularly travel for more than sixty minutes between worksites or exceed a total of seven hours of travel time per work week.