

WSR 17-03-013
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 5, 2017, 11:05 a.m., effective January 6, 2017]

Effective Date of Rule: January 6, 2017.

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 clarifying that the department may approve a work week limit in excess of eighty service hours per week in exceptional circumstances and made a minor correction in WAC 388-114-0040. This CR-103E filing supersedes WSR 16-18-091 filed on September 7, 2016. The rules hearing was held November 22, 2016, and the department intends to file the permanent order as soon as possible.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 15, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 15, Amended 1, Repealed 0.

Date Adopted: December 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).

(4) The value of those units is deducted from your new freedom budget.

(5) The rest of the funds can be used for other covered goods and services or saved.

~~((a))~~ (6) Once a service month begins, the number of personal care units may not be altered during that month.

~~((b))~~ (7) 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))~~ (8) Prior to the service month, you may elect to use savings funds to buy additional personal care.

~~((d))~~ (9) You ~~((eaa))~~ may choose to have your personal care provided by an individual provider (IP) or a home care agency.

(10) Each unit will be deducted from your new freedom budget at the average IP wage rate including mileage.

~~((e))~~ (11) 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))~~ (12) 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))~~ (13) You may assign your predetermined personal care units to a different provider during the month of service.

(14) Under chapter 388-114 WAC, individual providers for one or more department clients who work more than forty hours in a work week, are entitled to overtime and the responsibility for paying the extra cost as follows:

(a) If the department approves the individual provider to work more than forty hours per week as described in WAC 388-114-0080, 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 must pay the extra costs for the unapproved overtime hours and the addi-

tional 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, niece, nephew, 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" means 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" means 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" means the total number of service hours an individual provider may provide in a work week. Travel time and required IP training time hours are not included in the work week limit.

NEW SECTION

WAC 388-114-0030 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 performed 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.

(3) 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 and beginning July 1, 2017, the maximum work week limit cannot exceed sixty service hours.

NEW SECTION

WAC 388-114-0040 How many hours may the department approve an individual provider to work in a work week? Subject to the expenditure limitations of RCW 74.39A.270(10), the department may approve an individual provider to work more than a total of forty hours in a work week for one or more of the following reasons:

(1) The individual provider has a higher work week limit as described under WAC 388-114-0030(2);

(2) The individual provider has a higher work week limit because the department determined that the additional hours are necessary for the client for one of the reasons listed in WAC 388-114-0080;

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

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

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 his-

tory in February and March 2016? 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:

(1) The individual provider may appeal the determination by submitting a request to the client's case manager to review the work week limit calculated under WAC 388-114-0030, but the IP is not entitled to an administrative hearing under chapter 34.05 RCW.

(2) The department will review the work week limit 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 review the work week limit of 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 for review 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, 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 388-114-0070 May an individual provider work more than his or her work week limit? An individual provider with a work week limit of:

(1) Forty service hours per week may only exceed the work week limit as described in WAC 388-114-0080;

(2) More than forty service hours has flexibility to work more than his or her work week limit in a given week if:

(a) Requested by the client to meet a specific need;

(b) Doing so would not exceed the client's monthly authorized hours;

(c) 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

(d) 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 temporarily increase an individual provider's work week limit allowed in WAC 388-114-0040? (1) In addition to the increased work week limit allowed under WAC 388-114-0040, the department may temporarily increase an individual provider's work week limit if it determines 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; or

(c) 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 an increase to an individual provider's work week limit is no longer approved by the department, the individual provider's work week limit will revert to the level described in WAC 388-11-0030.

(3) The department may only approve a work week limit in excess of eighty service hours per week for an individual provider if the client's circumstances meet the criteria set out in WAC 388-440-0001 (1)(a) through (e) and where the department is unaware of any reason that the individual provider will be unable to appropriately meet the needs of the client.

(4) 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.

(5) The individual provider is not entitled to an administrative hearing under chapter 34.05 RCW regarding the department's decision on whether to approve or continue a temporary increase to the work week limit.

NEW SECTION

WAC 388-114-0090 How does the individual provider work week limit affect the client's responsibilities listed in WAC 388-71-0505? 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 limit 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 or non-required training time? (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 or non-required training time, 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;

(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 under chapter 34.05 RCW 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.

WSR 17-03-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-06—Filed January 6, 2017, 4:29 p.m., effective January 6, 2017, 4:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for bottomfish.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-23500D; and amending WAC 220-56-235.

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 Pacific Fishery Management Council adopted changes to the recreational bottomfish seasons along the Washington coast as part of their groundfish biennial management cycle for 2017 and 2018. The recreational bottomfish season is currently open year round in coastal marine areas however, due to prohibitive ocean conditions during the winter there is minimal fishing effort from mid-October through mid-March. This rule conforms to federal action taken by the National Marine Fisheries Service. 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: January 6, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-56-23500D Possession limits—Bottomfish.

Notwithstanding the provisions of WAC 220-56-235, effective immediately through March 10, 2017, it is unlawful to fish for or possess bottomfish in Marine Areas 1 through 3 and Marine Area 4 west of the Bonilla Tatoosh line. Unless otherwise amended, all permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 11, 2017:

WAC 220-56-23500D Possession limits—Bottomfish.

WSR 17-03-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-07—Filed January 9, 2017, 6:01 p.m., effective January 9, 2017, 6:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab fishing rules.

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

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

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

Reasons for this Finding: The period allowing vessels not designated on a Dungeness crab coastal fishery license to transport or deploy up to two hundred fifty pots is extended to provide for a safe and orderly fishery in light of a delay in the start of fishing during the preseason gear setting 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: January 9, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-52-04000B Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until February 11, 2017 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from December 31, 2016 to January 5, 2017, are only valid for the area south of 46°28.00 N. Lat.

(2) It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and until 9:00 a.m. January 13, 2017;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and;

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(3) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(4) All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000Z Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (16-331)

WSR 17-03-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-05—Filed January 10, 2017, 11:19 a.m., effective January 10, 2017, 11:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational salmon rules for Puget Sound.

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

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: Washington department of fish and wildlife and tribal comanagers agreed to a limited number of Chinook encounters retaining or releasing fish that anglers are allowed in Marine Areas 7 through 10. Marine Area 9 preliminary estimates indicate that there is a high risk of reaching the allowable limit of total Chinook encounters prior to the scheduled end of the season. This emergency rule is needed to modify these fisheries to stay within the agreed to number of encounters and increasing the possibility of providing season-long fisheries which will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: January 10, 2017.

J. W. Unsworth
Director

NEW SECTION

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

(1) **Marine Areas 7:** Effective immediately until further notice:

(a) Daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

(2) **Marine Areas 8-1 and 8-2:** Effective immediately until further notice:

(a) Daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

(3) **Marine Area 9:** Effective immediately until further notice:

(a) Closed.

(4) **Marine Area 10:** Effective immediately until further notice:

(a) Daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

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 sections of the Washington Administrative Code are repealed:

WAC 232-28-62100P Puget Sound salmon—Saltwater seasons and daily limits. (16-313)

WAC 232-28-62100Q Puget Sound salmon—Saltwater seasons and daily limits. (16-314)

WSR 17-03-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-08—Filed January 10, 2017, 4:06 p.m., effective January 10, 2017, 4:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500T; and amending WAC 220-52-045.

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: Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair start provisions. A delay due to elevated marine toxins aligns with the tri-state crab agreement and similar rules in Oregon and California. 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: January 10, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04500U Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-52-045, effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from the Queets River (47°31.70), Washington to the WA/OR border (46°15.00) and Grays Harbor and Willapa Bay.

(a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(b) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before January 7, 2017, are prohibited from fishing in the following areas for the durations specified:

(c) The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 a.m. January 17, 2017; and

(d) The waters between Oysterville (46°33.00) and the U.S. Canadian border until 8:00 a.m. February 11, 2017.

(2) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine toxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(3) It is permissible to set crab gear in the area between the Queets River (47°31.70), Washington and the U.S./Canada border, beginning at 8:00 a.m. January 12, 2017.

(4) It is permissible to pull crab gear in the area between the Queets River (47°31.70), Washington and the U.S./Canada border, beginning at 12:01 a.m. January 15, 2017.

(5) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00 N. Lat. 124°20.70 W. Lon.

(b) Northwest Corner: 47°28.00 N. Lat. 124°34.00 W. Lon.

(c) Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(6) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(7) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner (Tatoosh Island)

(b) Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.

(c) Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.

(d) Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(8) All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04500T Commercial crab fishery—Seasons and areas—Coastal. (16-331)

**WSR 17-03-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-09—Filed January 11, 2017, 3:18 p.m., effective January 13, 2017]

Effective Date of Rule: January 13, 2017.

Purpose: Amend recreational razor clam rules.

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

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

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

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

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: January 11, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000Y Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. January 13, 2017 through 11:59 p.m. January 15, 2017, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. January 13, 2017 through 11:59 p.m. January 15, 2017, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

REPEALER

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

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

**WSR 17-03-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-10—Filed January 12, 2017, 10:24 a.m., effective January 12, 2017, 10:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for bottom-fish.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-23500D and 220-56-23500E; and amending WAC 220-56-235.

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 allow fishing for surfperch year round while fishing from the beach in Marine Areas 1, 2-1, 2-2, 3 and Marine Area 4 west of the Bonilla Tatoosh line which was closed by WSR 17-03-040. This rule conforms to federal action taken by the National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 12, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-23500E Possession limits—Bottomfish.

Notwithstanding the provisions of WAC 220-56-235, effective immediately through March 10, 2017, it is unlawful to fish for or possess bottomfish in Marine Areas 1, 2-1, 2-2, 3 and Marine Area 4 west of the Bonilla Tatoosh line. Except it is permissible to fish for surfperch year round when fishing from the beach. Unless otherwise amended, all permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed"

WAC 220-56-23500D Possession limits—Bottomfish. (17-06)

The following section of the Washington Administrative Code is repealed effective March 11, 2017:

WAC 220-56-23500E Possession limits—Bottomfish.

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

WSR 17-03-081
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed January 12, 2017, 11:31 a.m., effective January 27, 2017]

Effective Date of Rule: January 27, 2017.

Purpose: The department is amending WAC 388-493-0010 Working family support, to extend the effective dates for the working family support program. This is an extension to the emergency rule filed as WSR 16-20-038 that expires on January 26, 2017. The CR-101 was filed as WSR 16-21-072 on October 28, 2016, after the original CR-103E was filed, and the department filed the CR-102 as WSR 17-03-051 on January 9, 2017. The department will hold the public hearing on February 21, 2017, and plans to adopt the permanent rule on March 23, 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 388-493-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090.

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

Reasons for this Finding: Current language in WAC 388-493-0010 Working family support, supports the program through September 30, 2016. This date has been extended to June 30, 2017. Language needs to be updated to reflect the extension in order to continue providing additional food assistance to qualifying low-income families. This is an extension to the emergency rule filed as WSR 16-20-038 that expires on January 26, 2017. The CR-101 was filed as WSR 16-21-072 on October 28, 2016, after the original CR-103E was filed, and the department filed the CR-102 as WSR 17-03-051 on January 9, 2017. The department will hold the public hearing on February 21, 2017, and plans to adopt the permanent rule on March 23, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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: January 10, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-08-034, filed 3/30/16, effective 5/1/16)

WAC 388-493-0010 Working family support. (1)

What is the working family support (WFS) program?

The working family support program is administered by the department of social and health services (Department) and provides an additional monthly food benefit from May 2016 through ~~((September 2016))~~ June 30, 2017 to low income families who meet specific criteria. Continuance of the program beyond ~~((September 30, 2016))~~ June 30, 2017 is contingent on specific legislative funding for the working family support program.

(2) The following definitions apply to this program:

(a) "Co-parent" means another adult in your home that is related to your qualifying child through birth or adoption.

(b) "Qualifying child" means a child under the age of eighteen who is:

(i) Your child through birth or adoption; or

(ii) Your step child.

(c) "Work" means subsidized or unsubsidized employment or self-employment. To determine self-employment hours, we divide your net self-employment income by the federal minimum wage.

(3) Who is eligible for the working family support program?

You are eligible for working family support food assistance if you meet all of the following:

(a) You receive food assistance through basic food, food assistance program for legal immigrants (FAP), or transitional food assistance (TFA);

(b) Receipt of working family support food assistance would not cause your countable food assistance income to exceed the two hundred percent federal poverty level (FPL);

(c) No one in your food assistance unit receives temporary assistance for needy families (TANF) or state family assistance (SFA);

(d) A qualifying child lives in your home;

(e) You, your spouse, or co-parent, work a minimum of thirty five hours a week, and if you live with your spouse or co-parent, you must be in the same assistance unit;

(f) You provide proof of the number of hours worked; and

(g) You reside in Washington state per WAC 388-468-0005.

(4) How can I apply for working family support?

(a) The department will review your eligibility for the working family support program:

(i) When you apply for food assistance, or

(ii) At the time of your food assistance eligibility review.

(b) You may request the working family support benefit in person, in writing, or by phone at any time.

(5) How long can I receive working family support?

(a) You may recertify up to an additional six months for working family support if you meet the criteria listed above and provide current proof that you, your spouse, or co-parent works a minimum of thirty five hours a week.

(b) Working family support certification ends when:

(i) You complete either a certification or mid-certification review for food assistance under WAC 388-434-0010 or WAC 388-418-0011, and you do not provide proof of the

number of hours that you, your spouse, or your co-parent work;

(ii) You no longer receive basic food, FAP, or TFA;

(iii) You receive TANF or SFA;

(iv) You do not have a qualifying child in your home;

(v) You, your spouse, or co-parent, no longer work a minimum of thirty five hours a week; or

(vi) You are no longer a resident of Washington state.

(6) What benefits will I receive if I am eligible for the working family support program?

(a) The assistance unit will receive a separate ten dollars monthly food assistance benefit each month.

(b) Working family support benefits are not prorated.

WSR 17-03-086

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-11—Filed January 12, 2017, 3:41 p.m., effective January 12, 2017, 3:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea urchin fishing.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-52-07300C; and amending WAC 220-52-073.

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial harvest of green sea urchins in Districts 1 and 2 because the quota limit has been reached. Harvestable surpluses of red sea urchins exist in Districts 1 and 2 to remain open for harvest. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: January 12, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07300D Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 1 and District 2. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven-days-per-week: District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landing of red or green sea urchins for each weekly fishery opening period is 3,000 pounds of each species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300C Sea urchins. (16-329)

WSR 17-03-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-13—Filed January 13, 2017, 9:02 a.m., effective January 13, 2017, 9:02 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for bottomfish.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-23500E and 220-56-23500F; and amending WAC 220-56-235.

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 allow fishing for surfperch year round while fishing from the beach in Marine Areas 1, 2, 2-1, 2-2, 3 and Marine Area 4 west of the Bonilla Tatoosh line which was closed by filing WSR 17-03-040. This rule conforms to federal action taken by the National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 13, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-23500F Possession limits—Bottomfish. Notwithstanding the provisions of WAC 220-56-235, effective immediately through March 10, 2017, it is unlawful to fish for or possess bottomfish in Marine Areas 1, 2, 2-1, 2-2, 3 and Marine Area 4 west of the Bonilla Tatoosh line. Except it is permissible to fish for surfperch year round when fishing from the beach. Unless otherwise amended, all permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-23500E Possession limits—Bottomfish. (17-06)

The following section of the Washington Administrative Code is repealed effective March 11, 2017:

WAC 220-56-23500F Possession limits—Bottomfish.

WSR 17-03-090
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-12—Filed January 13, 2017, 10:40 a.m., effective January 16, 2017]

Effective Date of Rule: January 16, 2017.

Purpose: Amend commercial sea urchin fishing.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300D; and amending WAC 220-52-073.

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial harvest of green sea urchins because the quota limit has been reached. Harvestable surpluses of red sea urchins exist in Districts 1 and 2 to remain open for harvest. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: January 13, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07300E Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective January 16, 2017, until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 1 and District 2. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The maximum cumulative landing of red sea urchins for each weekly fishery opening period is 3,000 pounds per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 16, 2017:

WAC 220-52-07300D Sea urchins. (17-11)

WSR 17-03-105

EMERGENCY RULES

WASHINGTON STATE UNIVERSITY

[Filed January 17, 2017, 10:53 a.m., effective January 17, 2017, 10:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To update and clarify the university's procedural rules, chapter 504-04 WAC, and the standards of conduct for students, chapter 504-26 WAC. The changes include, but are not limited to, procedural rules regarding student conduct adjudications, student conduct hearings, and appeals.

Citation of Existing Rules Affected by this Order: Amending WAC 504-04-010, 504-04-020, 504-04-110, 504-04-120, 504-04-130, 504-04-140, 504-26-001, 504-26-010, 504-26-401, 504-26-402, 504-26-404, 504-26-406, 504-26-407, and 504-26-601.

Statutory Authority for Adoption: RCW 28B.30.150.

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: On December 1, 2016, the Washington Court of Appeals, Division III, issued a decision in the case of *Arishi vs. Washington State University*, Case No. 33060. The court held that universities are required to use full adjudications under the Washington Administrative Procedure Act for certain student disciplinary matters. These emergency rules implement changes to WSU's student conduct process to comply with the court's decision. Additionally, the emergency rule in WAC 504-04-110 sets forth areas where WSU's full adjudications will differ from the model rules of procedure in chapter 10-08 WAC. These are based on Title IX of the Civil Rights Act of 1964, its implementing regulations, and guidance from the federal Office for Civil Rights regarding Title IX.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 14, 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 1, Amended 14, 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 14, Repealed 0.

Date Adopted: January 17, 2017.

D. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-089, filed 8/6/13, effective 9/6/13)

WAC 504-04-010 Matters subject to brief adjudication. The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 34.05.491:

(1) Student conduct proceedings. ~~((The procedural rules of chapter 504-26 WAC apply to these proceedings.))~~ Student conduct proceedings under chapter 504-26 WAC are treated as brief adjudications, except for matters involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, which shall be referred for a full (formal) adjudication in accordance with this chapter.

(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the office of admissions.

(3) Appeals of parking violations. Appeals of parking violations are brief adjudicative proceedings conducted pursuant to applicable rules. See WAC 504-13-860, 504-14-860, 504-15-860, and 504-19-860.

(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC.

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the office of scholarships and financial aid.

(6) Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the office of student affairs.

(7) Discipline and termination of student employees. When required by law, hearings for the termination of or imposition of disciplinary measures on student employees shall be brief adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-020 Appointment of presiding officers for all adjudicative proceedings. The president of Washington State University or his or her designee shall have the power to appoint ~~((committees or))~~ members of the faculty, staff and student body; administrative law judges; members in good standing of the Washington state bar association; the president or his or her designee; a person or entity with whom the university contracts; or any combination of the above to be presiding officers for formal and brief adjudicative proceedings. When more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters. The term "presiding officer" as used in this chapter shall be read in the plural when the context demands.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-110 Adoption of model rules of procedure for formal (full) proceedings—Exceptions. In formal proceedings (also referred to as full adjudications) pursuant to RCW 34.05.413 through 34.05.476, Washington State University follows the Administrative Procedure Act (chapter 34.05 RCW) and hereby adopts the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC, with the following exceptions and modifications:

(1) WAC 10-08-190 Adjudicative proceedings ~~((, cameras recording))~~—Cameras—Recording devices.

See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings.

~~((Other procedural rules adopted in this title and this chapter are supplementary to the model rules.))~~ (2) WAC 10-08-040 Adjudicative proceedings—Notice of hearing. In addition to this model rule regarding notice, the provisions in WAC 504-26-401(5) and 504-26-403 (1) and (2) apply.

(3) The parties in a student conduct matter implicating Title IX of the Civil Rights Act of 1964 (Title IX) shall include the complainant(s), unless the complainant(s) has notified the university she/he does not wish to participate as a party.

(4) WAC 10-08-120 Adjudicative proceedings—Subpoenas. In determining whether to issue, quash, or modify a subpoena to a complainant/witness in a student conduct matter implicating Title IX, the presiding officer shall give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal office for civil rights. In such cases, the party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(5) Cross examination. As required by RCW 34.05.449, cross examination of witnesses shall be permitted to the extent necessary for full disclosure of all relevant facts and issues. However, in a student conduct matter implicating Title IX, the complainant and respondent shall not be permitted to cross examine each other directly. The preferred method of cross examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. The presiding officer may decline to ask cross examination questions that are irrelevant, immaterial, or unduly repetitious. In accordance with evidence rule 412, a complainant's sexual history generally will not be admissible. All questions submitted by the parties will be retained as part of the agency record.

(6) Discovery. Depositions, interrogatories, and medical examinations of parties as part of discovery are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process, in accordance with RCW 34.05.446.

(7) Standard of proof. The standard of proof in student conduct proceedings is preponderance of the evidence.

(8) Administrative review in full adjudications. Within twenty days of service of an initial order resulting from a full

adjudication in a student conduct proceeding, or a different time period as specified in the initial order, a student or student organization may appeal the decision to the university president or designee, who reviews the matter in accordance with RCW 34.05.464. Complainants in student conduct matters shall be afforded the same right to appeal as respondents. The university president or designee, of his or her own initiative, may review any initial order resulting from a full adjudication. The decision of the president shall be the final order of the university. If no appeal is initiated, the initial order following a full adjudication becomes the final order of the university after twenty-one days, or the day after the appeal period specified in the initial order, whichever is sooner.

In the case of a conflict between the model rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university shall govern.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-120 Confidentiality of student, faculty and staff formal adjudicative proceedings. In formal adjudicative proceedings, the presiding officer shall have the power to close all or part of the hearing to public observation. The presiding officer shall have the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also shall have the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or medical withdrawal, hearings will normally be closed to public observation. In student conduct matters implicating Title IX, hearings will be closed to public observation.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-130 Advising and representation of parties. Any person whose rights are in issue in a formal adjudicative proceeding shall have the right to have an adviser present during any stage of the proceedings. However, only persons admitted to the practice of law in the state of Washington, including licensed legal interns pursuant to admission to practice rule 9, shall be permitted to act as a representative at the proceedings. The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-140 Discovery. Discovery in formal hearings may be permitted at the discretion of the presiding officer, except as provided in WAC 504-04-110(6). In permitting discovery, reference shall be made to the civil rules applicable in court proceedings for guidance.

The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-001 Preamble. Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold and be accountable for these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.

Accordingly, the conduct process is nonadversarial to the extent possible, confidential except to the extent permitted by law and these standards of conduct (this chapter), and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of the advisor is very limited, except in full adjudications. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-010 Definitions. (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appeals board" means any person or persons authorized by the vice president for student affairs to consider an appeal from a university conduct board's or conduct officer's determination, or a determination after a full adjudication, as to whether a student has violated the standards of conduct for students and any sanctions imposed.

(3) The term "cheating" includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the office of student conduct. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any party, including the university, who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.

(9) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(10) The term "recognized student organization" means any number of persons who have complied with the formal requirements for university recognition.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a student is found responsible by the board to have violated these standards of conduct.

(16) The term "academic integrity hearing board" means teaching faculty and student representatives who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(19) The vice president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-401 Complaints and student conduct process. (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute

resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or ~~((as a university conduct board hearing))~~ referred for a full adjudication in accordance with chapter 504-04 WAC.

(a) ~~((When the allegation involves harm or threat of harm to any person or person's property and the accused disputes the facts and/or denies responsibility, the matter may be referred to the university conduct board for resolution.~~

~~(b))~~ If the possible or recommended sanction is suspension for greater than ten instructional days, expulsion (or suspension), revocation of degree, or loss of recognition of a student organization, the matter is referred ~~((to the university conduct board))~~ for a full adjudication in accordance with chapter 504-04 WAC.

~~((c))~~ ~~(b)~~ Matters other than those listed in (a) ~~((and (b)))~~ of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter ~~((to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision to refer the matter to the university conduct board for hearing is made by the university conduct officer and such decision is not subject to appeal))~~ for a full adjudication.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the accused student consents to such disclosure.

(5) All notifications and service under this chapter are delivered either by electronic mail or other electronic means, delivered personally, or sent via regular U.S. mail. Notifications sent via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar. The student or recognized student organization is responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in this chapter begin the date the notification is sent via electronic means, personally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to

the complainant and the accused student to assist in understanding the student conduct process. Except in full adjudications pursuant to chapter 504-04 WAC, the complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. 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 and do not entitle either party to a delay.

(7) ~~((The conduct officer or university conduct board's))~~ Determinations in student conduct matters are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct board or conduct officer proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-402 Conduct officer actions. (1) Any student ~~((charged))~~ alleged by a conduct officer ~~((with a violation of))~~ to have violated any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the procedures in WAC 504-26-401(5).

Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer or presiding officer, as applicable.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding and enter a finding that the accused student or recognized student organization is not responsible for the alleged conduct violation;

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

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or

(d) Refer the matter ~~((to the university conduct board pursuant to WAC 504-26-401(3)))~~ for a full adjudication in accordance with chapter 504-04 WAC.

(4) The conduct officer may consider the student's past contacts with the office of student conduct in determining an appropriate sanction and/or deciding whether to refer the case for a ~~((university conduct board hearing))~~ full adjudication.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

NEW SECTION

WAC 504-26-4031 Procedure for formal (full) adjudicative proceedings. The procedures for formal adjudicative proceedings are contained in chapter 504-04 WAC. The terms "formal" and "full" in reference to adjudications have the same meaning and are used interchangeably.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-404 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student conduct in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student conduct with a written determination, the evidence relied upon, and the sanctions imposed.

(c) The student has twenty-one days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review (unless an address is not provided therein); and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the office of student conduct ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily ~~((required to appear before a university conduct board))~~ referred for a full adjudicative hearing in accordance with chapter 504-04 WAC, with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be ~~((heard by the university conduct board))~~ referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-406 Interim suspension. In certain circumstances, the vice president for student affairs, or a designee, may impose an interim suspension prior to the university conduct board hearing or at any time prior to the university's final order.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

(a) Any part of the university community or public at large; or

(b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice president for student affairs or designee may determine to be appropriate.

(4) The vice president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct for students), and the policy reasons for the interim suspension. The vice president of student affairs or designee sends copies of the decision by personal delivery, by regular U.S. mail, or by electronic mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student conduct).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to a conduct officer hearing or a full adjudicative hearing in accordance with chapter 504-04 WAC, as appropriate, as quickly as feasible (~~ordinarily within five working days of the notice of the interim suspension where the accused student has not consented to a longer time frame~~).

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-407 Review of decision in brief adjudications. (1) The findings and sanctions rendered by the university conduct board or a conduct officer may be appealed by the complainant and accused student(s) in the manner prescribed in the decision letter containing the findings and sanctions. Such appeal must be made before twenty-one days of the date of the decision letter. The director of student conduct provides a copy of the appeal request by one party to the other party (parties) as appropriate.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board or conduct officer decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and the conduct file for conduct board decisions or the conduct file for conduct officer decisions for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed proce-

dures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and take one of the following actions:

(a) Affirm, reverse, or modify the conduct board's or conduct officer's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer;

(c) Set aside the findings and sanctions or remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(4) The appeals board's decision shall be personally delivered, sent via regular U.S. mail, or electronically mailed to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s) or electronically mailed to the student's official university electronic mail account. It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeals board's decision letter is the final order and shall advise the student or recognized student organization that judicial review may be available. If the appeals board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed (~~except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.~~

~~(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or recognized student organization no later than ten calendar days from the date the appeals board decision is signed.~~

~~(a) This review is limited to the record and purposes stated in subsection (2) of this section.~~

~~(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative~~

hearing under the Administrative Procedure Act (chapter 34.05 RCW).

~~(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the president or designee, they shall do so in writing.~~

~~(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available).~~

~~((7)) (6)~~ Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the regular U.S. mail, or electronically mailed. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

~~((8)) (7)~~ There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-601 Interpretations. Except in full adjudications, any question of interpretation or application of the standards of conduct for students is referred to the vice president for student affairs or designee for final determination.