

**WSR 17-01-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-311—Filed December 9, 2016, 3:42 p.m., effective December 15, 2016, 8:00 a.m.]

Effective Date of Rule: December 15, 2016, 8:00 a.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600V and 220-69-24000S; and amending WAC 220-52-040, 220-52-046, and 220-69-240.

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 provisions of this rule will reopen the commercial harvest areas in Puget Sound. There is sufficient allocation available in all of the commercial regions to accommodate this opening. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 9, 2016.

J. W. Unsworth  
 Director

**NEW SECTION**

**WAC 220-52-04000X Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040:

(1) Effective 8:00 a.m. December 15, 2016, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, Region 2 East, Region 3-1 or Region 3-3. These regions include Marine

Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, 26A East, 23A, 23B, 23C and 29.

(2) Effective 8:00 a.m. December 15, 2016, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 30 pots per license per buoy tag number in Crab Management Region 2 West or Region 3-2. These regions include Marine Fish-Shellfish Catch Reporting Areas, 25A, 25E, 23D, 25B, 25D and 26A West.

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

(4) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

**NEW SECTION**

**WAC 220-52-04600W Puget Sound crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 8:00 a.m. December 15, 2016, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(e) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(f) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(g) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(2) Effective 8:00 a.m. December 15, 2016, until further notice, the following areas are closed to commercial crab fishing:

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

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

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

#### NEW SECTION

**WAC 220-69-2400T Duties of commercial purchasers and receivers.** Notwithstanding the provisions of WAC 220-69-240, effective 8:00 am, October 1, 2016, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at [crabreport@dfw.wa.gov](mailto:crabreport@dfw.wa.gov), and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04600V Puget Sound crab fishery—Seasons and areas (16-293)

WAC 220-69-24000S Duties of commercial purchasers and receivers. (16-265)

**WSR 17-01-016  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-321—Filed December 9, 2016, 3:43 p.m., effective December 9, 2016, 3:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for sea urchins.

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

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial harvest of green sea urchins in Districts 3 and 4 because the quota limit has been reached. Harvestable surpluses of sea urchins exist in Districts 1, 2, 6 and 7 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: December 9, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-52-07300B 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, District 2, and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. 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: Sea Urchin District 1, District 2, 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 220-52-07300A Sea urchins. (16-319)

**WSR 17-01-037**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed December 13, 2016, 10:06 a.m., effective December 13, 2016, 10:06 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: WAC 182-538-150 (3)(b) incorrectly cites to WAC 182-538-130. The rule must clarify that adoption support and foster care alumni can opt out of the apple health foster care program for any reason. The permanent rules were filed on November 4, 2016, under WSR 16-23-021 and are effective on January 1, 2017. This emergency filing is necessary to continue the current emergency rules until the permanent rules become effective.

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

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

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

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

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

Date Adopted: December 13, 2016.

Wendy Barcus  
Rules Coordinator

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

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

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

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

- (a) WAC 182-538-068;
- (b) WAC 182-538-071;
- (c) WAC 182-538-096; and
- (d) WAC 182-538-111.

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

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

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

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

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

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

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

**WSR 17-01-049**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed December 13, 2016, 2:14 p.m., effective December 13, 2016, 2:14 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This emergency rule is necessary to assure that clients in the TAKE CHARGE program understand that coverage under this program is only for the duration of the waiver. The agency filed the preproposal statement of inquiry for permanent rule making under WSR 16-02-023. Since the last emergency filing under WSR 16-17-098, the agency held a public hearing and filed the permanent rule under WSR 17-01-013. This emergency rule is necessary because the filed permanent rule does not go into effect until January 9, 2017, three weeks after the expiration of the previous emergency.

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

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

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

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

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

Date Adopted: December 13, 2016.

Wendy Barcus  
Rules Coordinator

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

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

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

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

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

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

(e) Need family planning services;

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

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

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

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

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

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

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

(3) An applicant who has concurrent coverage under a creditable health insurance policy as defined in WAC 182-12-109 is not eligible for TAKE CHARGE unless the applicant is seeking confidential services and is either under nineteen years old or is a domestic violence victim who is covered under the perpetrator's insurance.

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

**WSR 17-01-050**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-323—Filed December 13, 2016, 2:59 p.m., effective December 13, 2016, 2:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting threatened or endangered species under the Endangered Species Act.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05700R; and amending WAC 220-32-057.

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

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

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

Reasons for this Finding: This emergency rule is needed to allow treaty fisheries to remove excess and undesirable hatchery sturgeon from the populations in the Priest Rapids and Wanapum pools. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 13, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-32-05700R Columbia River sturgeon.** Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon for commercial purposes in the Columbia River Priest Rapids and Wanapum pools, except that those individuals possessing treaty fishing rights under the Yakama treaties may fish for sturgeon with setline gear under the following provisions:

(1) **SEASON:** Immediately through 5:00 p.m. Saturday, December 24, 2016

(2) **AREA:** Priest Rapids Pool from one-half mile upstream of Priest Rapids Dam to the Boat Restricted Zone markers below Wanapum Dam, and in Wanapum Pool from one-half mile upstream of Wanapum Dam to Boat Restricted Zone markers below Rock Island Dam.

(3) **GEAR:** Setlines only. Hook size must be 9/0 or larger and circle hooks are encouraged over J-hooks. All other gears are specifically prohibited. Setlines are restricted to no more than 100 hooks per line.

(4) **COMMERCIAL AND SUBSISTENCE SIZE LIMITS:** Legal size limits include sturgeon from 38 inches to 72 inches fork length for any purpose in the Priest Rapids and Wanapum Pools. It shall be unlawful to contort or mutilate sturgeon in any way to conform to size limits.

(5) **ADDITIONAL REGULATIONS:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240, **except** that landings must be reported within 24 hours of completing the fish ticket. Sturgeon must be delivered to the buyer "in the round", that is with fins, eggs, guts, scutes, and gills intact.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 p.m. December 24, 2016:

WAC 220-32-05700R Columbia River sturgeon.

#### **WSR 17-01-081**

##### **EMERGENCY RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed December 15, 2016, 4:42 p.m., effective December 15, 2016, 4:42 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 192-120-050 will be amended to strike subsections (2) and (3). These sections permit claimants in continued claim status to request that their unemployment benefits be held while the department is making a decision regarding their eligibility for benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 192-120-050.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.010 [50.12.040].

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: State unemployment insurance law must conform to federal law or employers risk the loss of federal tax credits and/or the department risks the loss of administrative funding. The United States Department of Labor (USDOL), Employment and Training Administration, has advised the department that providing claimants the option to have their benefits held is inconsistent with federal law as described in USDOL's Unemployment Insurance Program Letter No. 45-89. The emergency filing replaces the permanent rule that took effect November 14, 2016.

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

Number of Sections Adopted at 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 0, Repealed 0.

Date Adopted: December 14, 2016.

Dale Peinecke  
Commissioner

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-120-050 Conditional payment of benefits.**

(1) If you are a continued claim recipient and your eligibility for benefits is questioned by the department, you will be conditionally paid benefits without delay for any week(s) for which you file a claim for benefits, until and unless you have been provided adequate notice and an opportunity to be heard.

~~(2) ((At your request, we will hold conditional payments when you are eligible for conditional payment under WAC 192-100-070.~~

~~(3) Payment will be issued for any payments withheld under subsection (2) of this section if we determine you are eligible for benefits.~~

(4)) Conditional payments will not be made under the conditions described in WAC 192-140-200 and 192-140-210.

**WSR 17-01-107**

**EMERGENCY RULES**

**DEPARTMENT OF REVENUE**

[Filed December 19, 2016, 10:55 a.m., effective December 19, 2016, 10:55 a.m.]

Effective Date of Rule: Immediately upon filing.

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

There are no changes from the previous emergency rule filed August 23, 2016, under WSR 16-17-122.

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

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

Other Authority: RCW 34.05.350, 82.04.460(2).

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

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

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

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

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

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

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

Date Adopted: December 19, 2016.

Kevin Dixon  
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. ~~(Any other)~~ Apportionable income that is not taxable under RCW 82.04.290 must be apportioned pursuant to WAC 458-20-19402((s)) Single factor receipts apportionment—Generally or WAC 458-20-19403((s)) Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401((s)) Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not ~~(includable)~~ from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another

state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

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

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

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

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

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

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

~~((e))~~ (f) If the ~~((allocation and))~~ apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(f) "Debit card" means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.~~

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

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

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

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

(ii) Registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and

loan holding company under the Federal National Housing Act, as amended;

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

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

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

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

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

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

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

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

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

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

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

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

(l) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit



card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

~~((4))~~ (m) **"Loan secured by real property"** means that more than fifty percent (~~(or more)~~) of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

~~((4))~~ (n) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any card holder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its card holder.

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

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

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

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

~~((q))~~ (s) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

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

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

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

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

(iii) For purposes of ~~((s)-of)~~ this subsection (3)(u), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a

state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

~~((4))~~ (v) **"Taxable period"** means the calendar year during which tax liability is incurred.

**(4) Receipts factor.**

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

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

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

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

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

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

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

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the

numerator of the receipts factor pursuant to (c) of this subsection (~~((4))~~) and the denominator of which is the total amount of interest and fees or penalties (~~(in the nature of interest from)~~) imposed in connection with loans not secured by real property.

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

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

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

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

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

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

(h) Receipts from merchant discount.

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

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

(A) In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees,

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

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

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

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

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

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

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

(j) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest (~~(and fees or penalties in the nature of interest from)~~), fees, and penalties imposed in connection with loans secured by real property.

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

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

(~~((j))~~) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise

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

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

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

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

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

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

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

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

which is the average value of all such funds and such securities.

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

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

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

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

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

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

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the

taxpayer receives prior permission from the department to use, or the department requires a different method.

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

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

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

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

**WSR 17-01-109**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-328—Filed December 19, 2016, 3:17 p.m., effective January 1, 2017]

Effective Date of Rule: January 1, 2017.

Purpose: Amend Puget Sound recreational clam and oyster rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

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

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

Reasons for this Finding: This emergency rule is needed because surveys at Sequim Bay State Park, Fort Flagler State Park, Point Whitney Tidelands and Freeland County Park, indicate that the clam populations on these beaches can support longer sport clam seasons. Similarly, oyster surveys at Sequim Bay State Park, Fort Flagler State Park, and Freeland County Park, indicate that these beaches can support a longer

oyster season, and the seasons should coincide with the clam seasons on these beaches. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 19, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-56-350001 Clams other than razor clams, mussels—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

(a) Fort Flagler State Park: Open January 1 through April 15, 2017, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.

(b) Freeland County Park: Open January 1, 2017 until further notice.

(c) Point Whitney Tidelands: Open January 1 through March 31, 2017.

(d) Sequim Bay State Park: Open January 1, 2017, until further notice.

(e) West Penn Cove: Closed January 1, 2017, until further notice, from the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road.

NEW SECTION

**WAC 220-56-38000N Oysters—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands except during the open periods specified herein:

(a) Fort Flagler State Park: Open January 1 through April 15, 2017, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round

from two white posts on the north end of the island at the vegetation line south to the end of the island.

(b) Freeland County Park: Open January 1, 2017, until further notice.

(c) Sequim Bay State Park: Open January 1, 2017, until further notice.

(d) West Penn Cove: Closed January 1, 2017, until further notice, from the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 17-01-110**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-321—Filed December 19, 2016, 3:19 p.m., effective December 19, 2016, 3:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for sea urchins.

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

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial harvest of red sea urchins in District 4 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: December 19, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-52-07300C 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: Sea Urchin District 1, District 2, 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 220-52-07300B Sea urchins. (16-321)

**WSR 17-01-135**  
**EMERGENCY RULES**  
**WESTERN WASHINGTON UNIVERSITY**

[Filed December 20, 2016, 2:57 p.m., effective January 4, 2017]

Effective Date of Rule: January 4, 2017.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Western Washington University is adopting a second emergency rule making per RCW 34.05.350(2), while actively pursuing adoption of a permanent rule as evidenced by the proposed rule making CR-102 filed on December 20, 2016, as WSR 17-01-127.

Purpose: Continuing Western Washington University's emergency sections of the student conduct code, chapter 516-21 WAC, is necessary to comply with the amendments to the

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

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

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

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

Reasons for this Finding: These amendments (34 C.F.R. Part 668.46) went into effect July 1, 2015, and apply to Western Washington University as a recipient of federal funds. The amendments to state law went into effect July 24, 2015. These changes to chapter 516-21 WAC, Student conduct code for Western Washington University, confirm that Western Washington University prohibits sexual misconduct (sexual assault, sexual harassment, sexual exploitation, stalking, relationship or dating violence, and domestic violence); clearly defines sexual misconduct and "consent"; clarifies the steps under Western Washington University's disciplinary process that apply in cases involving an allegation of sexual misconduct; and makes clear that protective interim measures can be implemented following an allegation of sexual misconduct.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 19, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 9, 2016.

Jennifer L. Sloan  
Rules Coordinator

## Chapter 516-21 WAC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Has been formally admitted to the university;

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

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

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

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

(f) Withdrew from the university after an alleged violation of the code, for conduct that occurred while they were enrolled in or participating in a program offered by the university.

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

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

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

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

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

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

(2) Western Washington University does not act as a policing agent for students when they are off campus. However, the university reserves the right to take action if a stu-

dent's conduct is determined to adversely affect a substantial university interest. Student conduct that occurs off campus may be subject to the student (~~rights and responsibilities~~) conduct code when it:

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

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

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

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

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

(5) Sanctions against student organizations are decided by procedures established by the university administrative unit governing that organization's recognition. Conduct proceedings against individual member(s) of a student organization can be initiated under this code, independent of any departmental action(s) taken against the student organization.

#### NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) ~~Engaging in any form of behavior that is meant to threaten or intimidate a member of the university community based on their membership in a protected class, including race, color, creed, religion, national origin, sex, age, disability, marital status, genetic information, status as a veteran, and/or sexual orientation.))~~ Harassment is conduct by any means that is severe, persistent, or pervasive, and is of such a

nature that it would cause a reasonable person in the victim's position substantial emotional distress and undermines their ability to work, study, or participate in their regular life activities or participate in the activities of the university, and/or actually does cause the victim substantial emotional distress and undermines the victim's ability to work, study, or participate in the victim's regular life activities or participate in the activities of the university.

#### NEW SECTION

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

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

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

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

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

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

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

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



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

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

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

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

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

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

~~(1) Possession of drug paraphernalia;~~

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

~~(3) Intentionally misusing or distributing prescription drugs. See also policy concerning alcohol and other drugs in the catalog.))~~ Except as permitted by law and university policy, the possession, use, cultivation, manufacturing, packaging, distribution, or provision of a controlled or illegal substance and the possession of drug paraphernalia while on university property or at an official university function is a violation of the code. This code violation also includes the intentional misuse or distribution of prescription drugs. See also *Policy Concerning Alcohol and Other Drugs* in the appendices section of the university catalog.

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

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

(1) Giving a false report or claim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, actual words or conduct

demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is not consent. Consent is ongoing and can be withdrawn at any time. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

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

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

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

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

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

(2) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (genitals or genital area, breast or buttock (clothed or unclothed)). This includes any intentional bodily contact of one's own intimate area with another person.

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

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

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

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

#### NEW SECTION

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

#### NEW SECTION

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

#### NEW SECTION

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

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

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

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

Proceedings under the code may be carried out prior to, simultaneously, or following civil or criminal proceedings in the courts. Since the standard of proof under the code (preponderance of evidence) differs from that of criminal law, decisions made through the student conduct process are not

subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced by a court of law.

#### NEW SECTION

##### **WAC 516-21-195 Notification of criminal arrest.**

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

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

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

#### NEW SECTION

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

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

##### **WAC 516-21-220 Weapons and destructive devices.**

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

- (1) Firearms or projectile devices of any kind, including BB, pellet, paintball, and airsoft guns, bow and arrow, and sling shots;
- (2) Martial arts weapons of any kind, including nunchucks, swords, or throwing stars;
- (3) Fireworks of any kind ~~((, including firecrackers, cherry bombs, or homemade explosives));~~
- (4) ~~((Projectile devices of any kind, including catapults or slingshots;))~~ Dangerous chemicals;
- (5) Any knife with a blade longer than three inches (excluding kitchen utensils); and
- (6) ~~((Any object that can be used as a weapon to cause bodily injury or damage to property.))~~ Weapons classified as dangerous in RCW 9.41.250.

This does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.-160.

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

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

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

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

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

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

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

(i) A cumulative grade point average above 2.0;

(ii) Not currently be under an active sanction of the conduct code or have had previous conduct violations during the current academic year; and

(iii) Be confirmed by the dean of students; and

(c) ~~((One))~~ Four staff members, generally but not exclusively from the division of enrollment and student services, ~~((nominated))~~ confirmed by the dean of students ~~((and confirmed by the vice president for enrollment and student services.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Receive written notification of the findings, decision and basis for each, delivered via e-mail to the student's official university e-mail account, within seven business days of the date of a meeting with a conduct officer or ten business

days of the date of a hearing with a review board, or if multiple meetings are necessary to determine responsibility or multiple individuals are involved and information presented by each is deemed necessary to determine responsibility, within seven or ten business days of the date of the final meeting for the specific incident;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) If both parties agree to mediate a complaint and the conduct officer agrees, mediation may be substituted for a conduct meeting. If mediation is unsuccessful, the original complaint will be considered and decided upon by the conduct officer. Mediation may not be substituted for a conduct meeting in cases involving violence or sexual violence, including sexual harassment, misconduct, or assault.) (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered as a complaint.

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

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

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

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

(3) In complaints of sexual violence, including sexual harassment, misconduct or assault, an investigation and writ-

ten report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).

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

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

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

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

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

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

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

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

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

(9) Relevant evidence is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The conduct officer, or review board chair, shall have the discretion to determine admissibility of evidence.

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

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

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

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

(b) The conduct officer misinterpreted the code;

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

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

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

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

(b) The conduct officer misinterpreted the code;

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

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

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

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

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

(6) No sanction will begin while a review is pending, except as provided in WAC 516-21-260, Procedures for immediate interim suspension. Temporary relocation of a student to alternative housing and/or restrictions between affected parties may be enforced during an appeal.)) (1) A student found in violation of the code may request a review of the conduct officer's findings and/or the sanctions imposed. For incidents involving violence and/or sexual violence, including sexual harassment, misconduct or assault, a complainant may also request a review. A review may be requested for any reason including:

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

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

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

(d) New information becomes available that was unavailable at the time of the original meeting, and could

substantially impact the original decision (a summary of this new information and its potential impact must be included).

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

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

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

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

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

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

(b) Findings and decision of the conduct officer;

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

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

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

(3) During the review hearing:

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

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

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

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

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

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

(4) New substantive information that was not presented at the time of the original conduct meeting will not be consid-

ered during the review. When new substantive information is present prior to or during the review hearing and such evidence could impact the original decision, the allegation(s) will be reheard by the conduct officer.

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

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

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

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

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

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

(b) The review board meets in private and reviews the complaint, the results of the subsequent investigation and its findings, and the conduct officer's decision. The board provides an opportunity for respondent and complainant (if applicable) to share information and call witnesses. The review board then deliberates in private.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The conduct officer.

(2) Recommendations of the committee on student rights and responsibilities shall be made to the vice-president for enrollment and student services for submission to and consideration by the president's cabinet. Prior to adoption of the code, all proposed modifications shall be reviewed by the office of the assistant attorney general at Western Washington University for consistency with university policies and the law. Final authority for changes to the code rests with the Western Washington University board of trustees. See also *POL-U1000.00 Developing and Maintaining University Provisions of the Washington Administrative Code*.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

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



**WSR 17-01-144**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**

(Pharmacy Quality Assurance Commission)

[Filed December 20, 2016, 5:01 p.m., effective December 20, 2016, 5:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-873A WAC, Hospital pharmacy associated clinics, the commission is establishing new standards supporting the regulatory, inspection, and investigation of pharmacy services provided in individual practitioner offices and multipractitioner clinics owned and operated by a hospital based on the level of risk and the type of pharmacy services provided at a particular location. This filing replaces emergency rules filed as WSR 16-18-074 on September 2, 2016.

Statutory Authority for Adoption: RCW 18.64.005.

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

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

Reasons for this Finding: SSB 6558 (chapter 118, Laws of 2016) amended RCW 18.64.043 directing the commission to adopt emergency rules to implement the bill and to keep the emergency rules in effect until permanent rules are adopted. The commission has filed a preproposal statement of inquiry, WSR 16-16-025, and has initiated stakeholder work on developing proposed rules.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: November 10, 2016.

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

**Chapter 246-873A WAC**

**HOSPITAL PHARMACY ASSOCIATED CLINICS**

NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

(a) Adding HPACs. A parent hospital pharmacy may add HPACs on a hospital pharmacy license at any time and must file a hospital pharmacy license addendum with the commis-

sion along with applicable fees set forth in WAC 246-907-0302. Added HPACs are subject to inspection in accordance with this chapter.

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

(3) HPAC locations are identified as follows:

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

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

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

#### NEW SECTION

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

#### NEW SECTION

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

#### NEW SECTION

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

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

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

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

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

(5) Controlled substance accountability. The responsible manager of the parent hospital pharmacy must include accountability standards of controlled substances consistent

with WAC 246-873-080(7) in the HPAC policies and procedures.

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

#### NEW SECTION

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

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

(a) The name of the patient;

(b) Name and amount of drug(s) added;

(c) Beyond use date; and

(d) Initials of the personnel who prepared and checked the solution.

#### NEW SECTION

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

#### NEW SECTION

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

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

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

#### NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

**WSR 17-01-149****EMERGENCY RULES****DEPARTMENT OF AGRICULTURE**

[Filed December 21, 2016, 8:32 a.m., effective December 21, 2016, 8:32 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

(2) Establishing a special permit to allow transportation and disposition of municipal solid waste from the area under quarantine for disposal at a solid waste landfill or disposal

facility in the apple maggot and plum curculio pest-free area; and

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

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

Statutory Authority for Adoption: RCW 17.24.011, 17.24.041.

Other Authority: Chapter 34.05 RCW.

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

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

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 9, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 9, Repealed 0.

Date Adopted: December 21, 2016.

Derek I. Sandison  
Director

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

**WAC 16-470-101 Establishing quarantines for apple maggot and plum curculio.** Apple maggot (*Rhagoletis*

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

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

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

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

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

**WAC 16-470-108 Distribution of infested or damaged fruit is prohibited.** Regulated commodities ~~((described))~~ specified in WAC 16-470-111(1) and 16-470-125(2) that are known or found to be infested or damaged by apple maggot or plum curculio may not be distributed, sold, held for sale, or offered for sale, unless the fruit has undergone cold storage treatment, in compliance with WAC 16-470-113 (1)(a) and (b) or 16-470-127 (1)(a) and (b), and the necessary certificate has been issued by the appropriate plant protection organization.

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

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

Washington), plum, prune, and quince are regulated under quarantine for apple maggot.

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

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

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

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

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

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

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

(c) The shipment is composed of ~~((regulated commodities))~~ fresh fruit specified in WAC 16-470-111(1) from Oregon, Idaho, or Utah, ~~((certified by the state of origin in compliance with))~~ meeting the requirements under WAC 16-470-122.

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

(i) The state in which the fruit was grown;  
 (ii) The point of repacking and reshipment;  
 (iii) The amount and kind of commodities comprising the lot or shipment; and

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

(2) The fruit originated outside the area under quarantine for apple maggot and is a reshipment in original, unopened

containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.

(3) The fruit is frozen solid.

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

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

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

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

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

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

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

(4) The shipment of yard debris, organic feedstocks, organic materials, or agricultural wastes from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate treatment or composting facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(2).

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

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

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

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

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

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

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

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

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

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

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

(1) A permit has been agreed to by the plant protection organization of the state of origin and the department. The permits must specify that the plant protection organization of the state of origin has conducted an adequate apple maggot detection program, which includes immediate written notification to the department of detections in counties where apple maggot has not previously been detected.

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

#### NEW SECTION

**WAC 16-470-124** **Special permits for solid waste and organic waste transport and disposition.** (1) The director may issue special permits admitting or allowing transportation and distribution of municipal solid waste for disposal at a solid waste landfill or appropriate disposal facility in the pest free area from the areas under quarantine established in WAC 16-470-105, subject to conditions and provisions which the director may prescribe to prevent introduction,

escape, or spread of the quarantined pests. For purposes of this section "solid waste" and "solid waste landfill" or "disposal facility" refer to solid waste and solid waste facilities regulated under chapters 70.95 RCW and 173-351 WAC by the Washington state department of ecology.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) State in which the fruit was grown;

(ii) Point of repacking and reshaping;

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

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

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

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

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

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

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

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

**WAC 16-470-130** **Special permits for fresh fruit transport and distribution**. The director may issue special permits admitting, or allowing transportation and distribution of, regulated commodities described in WAC 16-470-111(1)

and 16-470-125(2), which would not otherwise be eligible for entry from the area under quarantine, or for transportation or distribution, subject to conditions and provisions which the director may prescribe to prevent introduction, escape or spread of the quarantined pests.

**WSR 17-01-168**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed December 21, 2016, 11:06 a.m., effective December 28, 2016]

Effective Date of Rule: December 28, 2016.

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

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

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

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

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

Reasons for this Finding: A state plan amendment was authorized by the Social Security Administration which added prevocational legacy as an SSP payment. In order to keep in compliance with the state plan, these rules are being updated. In addition, the federal government requires that the department meet the SSP maintenance of effort (MOE). These rule changes are necessary to meet MOE and to prevent risk of losing federal funding by jeopardizing the medic-aid program.

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

and allow clients to more easily remain in the community setting, and less likely to enter into an institutional setting.

The department established a workgroup to draft language for permanent adoption but have discovered while working on the draft, that more extensive edits are required and will file a new preproposal and withdraw the previous CR-101.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: December 20, 2016.

Katherine I. Vasquez  
Rules Coordinator

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

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

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

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

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

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

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allowance,
- (viii) Intensive individual supported living support (companion homes).

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

(3) For new authorizations of family support opportunity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, 2013 and demonstrate an ongoing need for a residential allowance request on

a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

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

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

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

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

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

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

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

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

The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Your DDD eligibility is terminated; or

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