

WSR 18-22-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-303—Filed October 24, 2018, 3:45 p.m., effective October 26, 2018]

Effective Date of Rule: October 26, 2018.

Purpose: Amends recreational fishing rules for the Dungeness River.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

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

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

Reasons for this Finding: This emergency rule is necessary to close Dungeness River fisheries downstream of the Gray Wolf River at Dungeness Forks Campground. Currently the number of coho which have returned to the Dungeness River is below preseason expectation. To help ensure escapement needs are met the river will close to angling until further notice. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 15, 2018.

Joe Stohr
 for Kelly Susewind
 Director

NEW SECTION

WAC 220-312-02000J Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-020, effective October 26, 2018 until further notice, the waters of the Dungeness River (Clallam Co.) from the mouth upstream to Gray Wolf River at Dungeness Forks Campground are closed to fishing.

WSR 18-22-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-304—Filed October 24, 2018, 3:49 p.m., effective October 26, 2018]

Effective Date of Rule: October 26, 2018.

Purpose: Amend commercial salmon fishing rules for Puget Sound Catch Reporting Area 6D.

Citation of Rules Affected by this Order: Repealing WAC 220-354-16000I and 220-354-16000J; and amending WAC 220-354-160.

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

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

Reasons for this Finding: Current flow in the Dungeness River is well below the mean flow for late October causing returning coho to hold in the marine waters near the mouth of the river, making them particularly susceptible to fishing pressure and resulting in low hatchery returns at this time. This emergency rule is needed to close commercial gillnet fisheries in Catch Reporting Area 6D to ensure that hatchery escapement goals for coho are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 24, 2018.

Joe Stohr
 for Kelly Susewind
 Director

NEW SECTION

WAC 220-354-16000J Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective October 26 through November 10, 2018, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the peri-

ods set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7 and 7A	Closed
6D	Closed

REPEALER

The following section of the Washington Administrative Code is repealed effective October 26, 2018:

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

The following section of the Washington Administrative Code is repealed effective November 11, 2018:

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

**WSR 18-22-026
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 26, 2018, 10:25 a.m., effective October 27, 2018]

Effective Date of Rule: October 27, 2018.

Purpose: The department is amending WAC 388-105-0005 in order to update the tables of rates to reflect rates consistent with legislative appropriation and direction.

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

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

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

Reasons for this Finding: The rule needs to reflect the appropriate rate amounts to avoid confusion and possible interruption of service. The department has filed a CR-103 permanent rule-making order as WSR 18-21-001 on October 3, 2018.

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

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

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

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

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

Date Adopted: October 23, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-03-097, filed 1/17/18, effective 2/17/18)

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

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC/EARC	ARC/EARC	AFH
	Add-on	Add-on	Without Capital Add-On	With Capital Add-On	
A Low	\$(70.59) <u>73.34</u>	\$(76.01) <u>81.18</u>	\$(50.06) <u>52.02</u>	\$(50.06) <u>54.44</u>	\$71.96
A Med	\$(76.38) <u>79.35</u>	\$(81.80) <u>87.19</u>	\$(56.74) <u>58.95</u>	\$(56.74) <u>61.37</u>	\$74.74
A High	\$(85.66) <u>88.99</u>	\$(91.08) <u>96.83</u>	\$(62.27) <u>64.70</u>	\$(62.27) <u>67.12</u>	\$81.23
B Low	\$(70.59) <u>73.34</u>	\$(76.01) <u>81.18</u>	\$(50.06) <u>52.02</u>	\$(50.06) <u>54.44</u>	\$73.40

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
KING COUNTY

CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
B Med	\$((78.72)) <u>81.78</u>	\$((84.14)) <u>89.62</u>	\$((63.42)) <u>65.89</u>	\$((63.42)) <u>68.31</u>	\$79.78
B Med-High	\$((89.08)) <u>92.54</u>	\$((94.50)) <u>100.38</u>	\$((67.41)) <u>70.04</u>	\$((67.41)) <u>72.46</u>	\$86.56
B High	\$((93.75)) <u>97.39</u>	\$((99.17)) <u>105.23</u>	\$((76.98)) <u>79.97</u>	\$((76.98)) <u>82.39</u>	\$89.05
C Low	\$((76.38)) <u>79.35</u>	\$((81.80)) <u>87.19</u>	\$((56.74)) <u>58.95</u>	\$((56.74)) <u>61.37</u>	\$81.03
C Med	\$((85.66)) <u>88.99</u>	\$((91.08)) <u>96.83</u>	\$((71.09)) <u>73.83</u>	\$((71.09)) <u>76.28</u>	\$93.33
C Med-High	\$((106.51)) <u>110.64</u>	\$((111.93)) <u>118.48</u>	\$((94.60)) <u>98.27</u>	\$((94.60)) <u>100.69</u>	\$98.41
C High	\$((107.57)) <u>111.74</u>	\$((112.99)) <u>119.58</u>	\$((95.51)) <u>99.22</u>	\$((95.51)) <u>101.64</u>	\$99.76
D Low	\$((78.72)) <u>81.78</u>	\$((84.14)) <u>89.62</u>	\$((76.52)) <u>79.50</u>	\$((76.52)) <u>81.92</u>	\$86.46
D Med	\$((87.40)) <u>90.79</u>	\$((92.82)) <u>98.63</u>	\$((88.58)) <u>92.02</u>	\$((88.58)) <u>94.44</u>	\$95.25
D Med-High	\$((112.88)) <u>117.26</u>	\$((118.30)) <u>125.10</u>	\$((112.50)) <u>116.86</u>	\$((112.50)) <u>119.28</u>	\$((112.59)) <u>114.84</u>
D High	\$((121.59)) <u>126.30</u>	\$((127.01)) <u>134.14</u>	\$((121.59)) <u>126.30</u>	\$((121.59)) <u>128.72</u>	\$((128.01)) <u>130.57</u>
E Med	\$((146.85)) <u>152.53</u>	\$((152.27)) <u>160.37</u>	\$((146.85)) <u>152.53</u>	\$((146.85)) <u>154.95</u>	\$((154.39)) <u>157.48</u>
E High	\$((172.10)) <u>178.76</u>	\$((177.52)) <u>186.60</u>	\$((172.10)) <u>178.76</u>	\$((172.10)) <u>181.18</u>	\$((180.80)) <u>184.42</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
METROPOLITAN COUNTIES*

CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
A Low	\$((64.78)) <u>67.30</u>	\$((69.70)) <u>74.64</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$70.78
A Med	\$((68.28)) <u>70.94</u>	\$((73.20)) <u>78.28</u>	\$((54.51)) <u>56.64</u>	\$((54.51)) <u>59.06</u>	\$73.49
A High	\$((83.35)) <u>86.59</u>	\$((88.27)) <u>93.93</u>	\$((59.39)) <u>61.71</u>	\$((59.39)) <u>64.13</u>	\$79.80
B Low	\$((64.78)) <u>67.30</u>	\$((69.70)) <u>74.64</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$72.18

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
B Med	\$((74.05)) <u>76.93</u>	\$((78.97)) <u>84.27</u>	\$((60.09)) <u>62.43</u>	\$((60.09)) <u>64.85</u>	\$78.39
B Med-High	\$((83.83)) <u>87.09</u>	\$((88.78)) <u>94.43</u>	\$((63.86)) <u>66.35</u>	\$((63.86)) <u>68.77</u>	\$84.98
B High	\$((91.43)) <u>94.98</u>	\$((96.35)) <u>102.32</u>	\$((74.82)) <u>77.73</u>	\$((74.82)) <u>80.15</u>	\$87.41
C Low	\$((68.28)) <u>70.94</u>	\$((73.20)) <u>78.28</u>	\$((54.73)) <u>56.87</u>	\$((54.73)) <u>59.29</u>	\$79.61
C Med	\$((83.35)) <u>86.59</u>	\$((88.27)) <u>93.93</u>	\$((70.19)) <u>72.92</u>	\$((70.19)) <u>75.31</u>	\$91.57
C Med-High	\$((103.01)) <u>107.01</u>	\$((107.93)) <u>114.35</u>	\$((87.92)) <u>91.33</u>	\$((87.92)) <u>93.75</u>	\$93.63
C High	\$((105.05)) <u>108.09</u>	\$((108.97)) <u>115.43</u>	\$((93.50)) <u>97.13</u>	\$((93.50)) <u>99.55</u>	\$97.03
D Low	\$((74.05)) <u>76.93</u>	\$((78.97)) <u>84.27</u>	\$((75.47)) <u>78.41</u>	\$((75.47)) <u>80.83</u>	\$84.89
D Med	\$((85.04)) <u>88.34</u>	\$((89.96)) <u>95.68</u>	\$((86.81)) <u>90.18</u>	\$((86.81)) <u>92.60</u>	\$93.44
D Med-High	\$((109.19)) <u>113.42</u>	\$((114.11)) <u>120.76</u>	\$((109.74)) <u>113.99</u>	\$((109.74)) <u>116.41</u>	\$((109.19)) <u>111.37</u>
D High	\$((118.27)) <u>122.85</u>	\$((123.19)) <u>130.19</u>	\$((118.27)) <u>122.85</u>	\$((118.27)) <u>125.27</u>	\$((123.88)) <u>126.36</u>
E Med	\$((142.31)) <u>147.82</u>	\$((147.23)) <u>155.16</u>	\$((142.31)) <u>147.82</u>	\$((142.31)) <u>150.24</u>	\$((149.01)) <u>151.99</u>
E High	\$((166.34)) <u>172.77</u>	\$((171.23)) <u>180.11</u>	\$((166.34)) <u>172.77</u>	\$((166.34)) <u>175.19</u>	\$((174.13)) <u>177.61</u>

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

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
A Low	\$((63.65)) <u>66.13</u>	\$((68.89)) <u>73.79</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$69.07
A Med	\$((68.28)) <u>70.94</u>	\$((73.52)) <u>78.60</u>	\$((53.41)) <u>55.50</u>	\$((53.41)) <u>57.92</u>	\$71.67
A High	\$((83.38)) <u>86.59</u>	\$((88.59)) <u>94.25</u>	\$((58.45)) <u>60.73</u>	\$((58.45)) <u>63.15</u>	\$77.73

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

CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
B Low	\$((63.65)) <u>66.13</u>	\$((68.89)) <u>73.79</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$70.42
B Med	\$((74.05)) <u>76.93</u>	\$((79.29)) <u>84.59</u>	\$((58.97)) <u>61.27</u>	\$((58.97)) <u>63.69</u>	\$76.38
B Med-High	\$((83.83)) <u>87.09</u>	\$((89.07)) <u>94.25</u>	\$((62.67)) <u>65.11</u>	\$((62.67)) <u>67.53</u>	\$82.71
B High	\$((91.43)) <u>94.98</u>	\$((96.67)) <u>102.64</u>	\$((70.79)) <u>73.55</u>	\$((70.79)) <u>75.97</u>	\$85.04
C Low	\$((68.28)) <u>70.94</u>	\$((73.52)) <u>78.60</u>	\$((53.41)) <u>55.50</u>	\$((53.41)) <u>57.92</u>	\$77.55
C Med	\$((83.35)) <u>86.59</u>	\$((88.59)) <u>94.25</u>	\$((66.67)) <u>68.96</u>	\$((66.67)) <u>71.38</u>	\$89.04
C Med-High	\$((103.01)) <u>107.01</u>	\$((108.25)) <u>114.67</u>	\$((84.58)) <u>87.87</u>	\$((84.58)) <u>90.29</u>	\$91.01
C High	\$((104.05)) <u>108.09</u>	\$((109.29)) <u>115.75</u>	\$((88.40)) <u>91.83</u>	\$((88.40)) <u>94.25</u>	\$93.08
D Low	\$((74.05)) <u>76.93</u>	\$((79.29)) <u>84.59</u>	\$((71.36)) <u>74.14</u>	\$((71.36)) <u>76.56</u>	\$82.62
D Med	\$((85.04)) <u>88.34</u>	\$((90.28)) <u>96.00</u>	\$((82.09)) <u>85.28</u>	\$((82.09)) <u>87.70</u>	\$90.83
D Med-High	\$((109.19)) <u>113.42</u>	\$((114.43)) <u>121.08</u>	\$((103.74)) <u>107.76</u>	\$((103.74)) <u>110.18</u>	\$((104.36)) <u>103.46</u>
D High	\$((111.81)) <u>116.14</u>	\$((117.05)) <u>123.80</u>	\$((111.81)) <u>116.14</u>	\$((111.81)) <u>118.56</u>	\$((117.20)) <u>119.54</u>
E Med	\$((134.53)) <u>139.74</u>	\$((139.77)) <u>147.40</u>	\$((134.53)) <u>139.74</u>	\$((134.53)) <u>142.16</u>	\$((140.94)) <u>143.76</u>
E High	\$((157.25)) <u>163.33</u>	\$((162.49)) <u>170.99</u>	\$((157.25)) <u>163.33</u>	\$((157.25)) <u>165.75</u>	\$((164.70)) <u>167.99</u>

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

WSR 18-22-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-306—Filed October 26, 2018, 10:41 a.m., effective October 29, 2018]

Effective Date of Rule: October 29, 2018.

Purpose: Amends commercial sea urchin rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000G; and amending WAC 220-340-750.

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

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

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

Reasons for this Finding: This emergency rule is needed to close commercial sea urchin harvest in part of District 2 to prevent overharvest. Harvestable surpluses of sea urchin exist in the districts specified. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 26, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000G Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, effective October 29, 2018, 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 green sea urchin harvest seven days-per-week: Sea Urchin District 1, marine fish/shellfish catch areas 21A, 21B, 22A, 22B, 23A in Sea Urchin District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, 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 fish for, take, or possess green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(2) The maximum cumulative landings for green sea urchins for each weekly fishery opening period is 1,500 pounds per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 29, 2018:

WAC 220-340-75000F Commercial sea urchin fisheries.
(18-260)

WSR 18-22-028 EMERGENCY RULES DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed October 26, 2018, 1:40 p.m., effective October 26, 2018, 1:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 110-03 WAC creates rules for informal dispute resolution between the department of children, youth, and families (DCYF) and person or entities, and hearing regulations involving DCYF. This chapter supplements chapter 43.216 RCW, the Administrative Procedure Act, chapter 34.05 RCW and the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC.

Citation of Rules Affected by this Order: New chapter 110-03 WAC.

Statutory Authority for Adoption: Chapters 43.216, 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: These rules were previously adopted on July 1, 2018 (WSR 18-14-076), on an emergency basis when DCYF began operations. It is critical for these rules to continue on an emergency basis to ensure informal dispute and administrative hearing processes are in place while DCYF conducts rule making to adopt the permanent rules. The administrative hearing process provides the general public the opportunity to appeal the department's decisions, decisions that can impact the aggrieved person's ability to be licensed or employed.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 59, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 59, Amended 0, Repealed 0.

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

Date Adopted: October 26, 2018.

Brenda Villarreal
Rules Coordinator

Chapter 110-03 WAC
HEARING RULES

NEW SECTION

WAC 110-03-0010 Purpose and scope. (1) Application. This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of children, youth and families (DCYF).

(2) This chapter:

(a) Where appropriate, establishes rules encouraging informal dispute resolution between DCYF and persons or entities who disagree with the department's actions; and

(b) Regulates all hearings involving DCYF.

(3) The rules of this chapter are intended to supplement chapter 43.216 RCW; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules of procedure adopted by the office of administrative hearings (OAH), chapter 10-08 WAC. If a provision of this chapter conflicts with a provision in any chapter containing a specific procedural or substantive rule, the provision in the chapter containing the specific procedural or substantive rule governs.

(4) This chapter and any amendments to this chapter apply to cases pending before OAH or a review judge at the time of adoption unless the amendment or rule specifically states otherwise. An amendment to this chapter does not require that issues already addressed by OAH or a review judge be readdressed in order to comply with the amendment, unless the amendment expressly says otherwise.

(5) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine whether a hearing right exists, including the APA and DCYF program rules and laws.

(6) Specific DCYF hearing rules contained in other chapters within this title will prevail over the rules in this chapter.

(7) Effective date. This chapter is effective July 1, 2018.

(a) This chapter, and not chapter 388-02 or 170-03 WAC, applies to all cases in which DCYF has issued written notice of an appealable decision that is mailed after July 1, 2018.

(b) Chapter 388-02 or 170-03 WAC, and not this chapter, apply:

(i) To all cases in which the department of social and health services (DSHS) or the department of early learning (DEL) has issued written notice of an appealable decision concerning a DCYF program that was mailed before July 1, 2018, but an initial administrative hearing has not taken place.

(ii) To all cases in which DSHS or DEL has issued a written notice of an appealable decision concerning a DCYF program before July 1, 2018, and an initial administrative hearing has taken place, but an administrative law judge (ALJ) has not yet issued an initial order.

(iii) To all cases in which DSHS or DEL has issued written notice of an appealable decision concerning a DCYF program that was mailed before July 1, 2018, and an administrative hearing has taken place and an ALJ has issued an initial order, but a final order has not been issued by an ALJ from either OAH or a review judge from DSHS board of appeals (BOA).

(iv) To all cases in which an ALJ issued an initial or final order on a case concerning a DCYF program before July 1, 2018, and the appellant filed a petition for judicial review by July 1, 2018.

(c) WAC 110-03-0510 through 110-03-0590, governing review of initial and final orders, apply to the review of any orders issued in response to any written notice of an appealable decision mailed after July 1, 2018.

NEW SECTION

WAC 110-03-0020 Definitions. The following definitions apply to this chapter:

(1) "Adjudicative proceeding" means a proceeding in which an opportunity for hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of department action. An adjudicative proceeding may take place before the office of administrative hearings (OAH), and as provided under subsection (6) of this section, this term may also encompass hearings before the BOA.

(2) "Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an administrative proceeding resulting in an initial order. The office of administrative hearings (OAH), which is an independent state agency, employs the ALJs.

(3) "Board of appeals" or "BOA" means the DCYF board of appeals.

(4) "Business days" means all days except for Saturdays, Sundays and state legal holidays.

(5) "Calendar days" means all days including Saturdays, Sundays and state legal holidays.

(6) "Case" means the entire proceeding following the filing of a request for hearing with OAH.

(7) "Continuance" means a change in the date or time of a prehearing conference, hearing, or deadline for other action.

(8) "Date of the department action" means the date when the department issued a written decision that was appealable to OAH.

(9) "DCYF" or "department" means the department of children, youth, and families.

(10) "DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

(11) "Deliver" means giving a document to a person or entity in person or placing the document into the person's or entity's possession as authorized by the rules of this chapter or chapter 34.05 RCW.

(12) "Documents" means papers, letters, writings, or other printed or written items.

(13) "Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present.

Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location as provided in RCW 34.05.455.

(14) "Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order.

(15) "Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules.

(a) To show good cause, the ALJ must find that the party had a good reason for what they did or did not do using the provisions of superior court civil rule 60 as a guideline.

(b) Good cause may include, but is not limited to, the following examples:

(i) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(ii) You could not respond to the notice because it was written in a language that you did not understand.

(16) "Hearing" means a session held before OAH or a BOA review judge for the purpose of deciding issues of fact or law that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DCYF. For purposes of this chapter, adjudicative proceedings include administrative hearings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 110 WAC, or other law.

(17) "Hearing impaired person" means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

(18) "Initial order" is a decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

(19) "Judicial review" means a superior court's review of a final order.

(20) "Limited-English-proficient person" includes limited-English-speaking persons or other persons unable to readily communicate in spoken English.

(21) "Limited-English-speaking person" means a person who, because of non-English-speaking cultural background or disability (including a hearing impairment), cannot readily speak or understand the English language.

(22) "OAH" means the office of administrative hearings. This is a separate agency and not a part of DCYF.

(23) "Party" means a person or entity to whom a DCYF adverse action is directed and who has a right under law or rule to be involved in the hearing process. DCYF also is a party.

(24) "Prehearing conference" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

(25) "Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF administrations and divisions.

(26) "Reconsideration" has the same meaning as described in WAC 110-03-0590(1).

(27) "Record" means the official documentation of the hearing process. The record includes tape recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

(28) "Representative" means the person selected by a party to represent that party in an administrative hearing. "Lay representative" means a person or advocate who is assisting a party in presenting that party's case in an administrative hearing. If the party selects an attorney or a lay representative as their representative, DCYF will not pay for that attorney's or lay representative's services.

(29) "Review" means the act of reviewing initial orders and issuing the DCYF final order as provided by RCW 34.05.464.

(30) "Review judge" or "BOA review judge" means an attorney employed by the DCYF BOA to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(31) "Rule" means a state regulation, including a licensing standard. Rules are found in the Washington Administrative Code (WAC).

(32) "Stay" means an order temporarily halting the DCYF decision or action.

NEW SECTION

WAC 110-03-0030 Computing time for meeting deadlines in the hearing process. (1) When counting days to determine when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order. For example, if an initial order is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday or state legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and state legal holidays.

(4) The deadline ends at 5:00 p.m. on the last day.

(5) If a request is not received within the required time frames, an individual loses their right to a hearing or to appeal an adverse action by DCYF.

NEW SECTION

WAC 110-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing only if a law or DCYF rule expressly gives that right and a hearing is requested in a timely manner. If a party is unsure if they have a right to a hearing, they should request one.

(2) Some DCYF programs may require a party to go through an informal administrative review process before they can request a hearing. The notice of action that DCYF sends a party should include information about this requirement.

(3) A party has only a limited time to request a hearing. The deadline for the request is set by statute or DCYF rule. In most cases, DCYF will send a notice of adverse action that

gives specific information about how, where and when to request a hearing.

(4) A challenge to a DCYF adverse action is heard in an administrative hearing by an administrative law judge (ALJ) employed by the office of administrative hearings (OAH). Not all DCYF actions may be challenged through the hearing process.

(5) If a party requests a hearing that is authorized under subsection (1) of this section, one will be scheduled.

(6) If DCYF or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right. The ALJ will decide either:

- (a) There is no right to a hearing and dismiss the case; or
- (b) There is a right to a hearing and proceed with the hearing.

NEW SECTION

WAC 110-03-0050 Requesting a hearing. (1) A request for hearing must be made in writing. DCYF will provide forms that requesting parties may use to request a hearing. The request for hearing can be made by the party requesting the hearing or by the party's representative.

(2) The hearing request must include:

- (a) The requesting party's name, address, and telephone number;
- (b) A brief explanation of why the requesting party disagrees with the DCYF adverse action;
- (c) Any assistance, such as a foreign or sign language interpreter or accommodation for a disability, needed by the requesting party; and
- (d) A copy of the notice from DCYF stating the adverse action.

(3) For a request for a hearing of a child protective services founded finding of child abuse or neglect, the request for hearing must be filed with OAH and served on DCYF within thirty calendar days after receiving notice of the agency review determination, pursuant to RCW 26.44.125.

(4) For a request for a hearing of a child care or foster care licensing adverse action, a request for hearing must be filed with OAH and served on DCYF within twenty-eight calendar days of DCYF's notice of the adverse action.

(5) For all other requests for hearings, a request for a hearing must be filed with OAH and served on DCYF as stated in the rule or law governing that action.

NEW SECTION

WAC 110-03-0060 Filing the request for hearing. (1) Filing is the act of delivering documents to OAH at the location listed in WAC 110-03-0070.

(2) The date of filing is the date documents are actually received by OAH during office hours.

- (3) A party may file documents with OAH by:
 - (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax transmission, if the party also mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (4) A party cannot file documents by email.

NEW SECTION

WAC 110-03-0070 Location of office of administrative hearings. (1) The office of administrative hearings (OAH) is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

(2) The address for the OAH is:

Office of Administrative Hearings
2420 Bristol Court S.W., 1st Floor
P.O. Box 42489
Olympia, WA 98504-2489
Phone: 360-407-2700
Fax: 360-664-8721.

NEW SECTION

WAC 110-03-0080 Service of notice and documents. (1) Service is the act of delivering a copy of documents to the opposing party. Service gives the opposing party notice of the request for a hearing or other action. When a document is delivered to a party, that party is considered served with official notice of the contents of the document.

(2) Unless otherwise stated in law or rule, a party may serve another party by:

- (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax, if the party also mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (3) A party cannot serve documents by email.
- (4) A party must serve all other parties or a party's representative, if the party is represented, whenever the party files a document or brief with OAH or BOA or when required by law.

(5) Unless otherwise stated in law or rule, service is complete when:

- (a) Personal service is made;
- (b) Mail is properly stamped, addressed, and deposited in the United States mail;
- (c) Fax produces proof of transmission;
- (d) A parcel is delivered to a commercial delivery service with charges prepaid; or
- (e) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 110-03-0090 Proof of service. A party may prove that an opposing party was served with documents by providing any of the following:

- (1) A sworn statement by the person who served the document;
- (2) The certified mail receipt signed by the recipient;
- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;
- (5) Proof of fax transmission; or
- (6) Acknowledgment by the party being served.

NEW SECTION

WAC 110-03-0100 Representation during the hearing process. (1) The party requesting the hearing may represent himself or herself or may have another person, except a DCYF employee, act as the representative.

(2) The representative may be a friend, relative, community advocate, attorney, paralegal, or lay representative.

(3) The representative must provide OAH and the other parties with the representative's name, address, and telephone number. If the representative is an attorney or lay representative, the representative must file a written notice of appearance in the action. If the party's representative is not an attorney, the party must provide a written statement to DCYF authorizing the release of information about the party to the representative.

(4) DCYF may be represented by a DCYF employee, a DCYF contractor, an assistant attorney general, or a special assistant attorney general.

NEW SECTION

WAC 110-03-0110 The right to an interpreter in the hearing process. (1) If a party or witness has limited-English proficiency (LEP), OAH will provide an interpreter during the hearing at no cost.

(2) If OAH is notified that a party is a limited-English-speaking person, all notices concerning hearings must:

(a) Be written in the party's primary language; or

(b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

NEW SECTION

WAC 110-03-0120 Interpreter qualifications. (1) Pursuant to chapters 2.42 and 2.43 RCW, OAH must provide a qualified interpreter to assist any person who:

(a) Has limited-English proficiency; or

(b) Is limited-English-speaking or hearing impaired; and

(c) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) Relatives of any party and DCYF employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If, at any time before or during the hearing, the ALJ finds that the interpreter does not provide accurate and effective communication, OAH must provide another interpreter.

NEW SECTION

WAC 110-03-0130 Waiver of interpreter services. (1) An eligible party may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record.

(3) The ALJ must determine that the waiver has been knowingly and voluntarily made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the hearing.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

NEW SECTION

WAC 110-03-0140 Requirements that apply to the use of interpreters. (1) Interpreters must:

(a) Use the interpretive mode that the parties, the limited English proficient, limited-English-speaking, or hearing impaired person, the interpreter, and the ALJ consider the most accurate and effective;

(b) Interpret statements made by the parties, witnesses, and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties unless required by law; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may videotape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

NEW SECTION

WAC 110-03-0150 Requirements that apply to decisions involving limited-English-speaking parties. (1)

When an interpreter is used at a hearing, the administrative law judge (ALJ) must explain on the record that decisions are written in English and that the office of administrative hearings (OAH) will provide an interpreter for an oral translation of the decision at no cost to the party needing interpretation services.

(2) OAH must provide the party needing interpretation services information about how to obtain those services. Information about how to access interpretation services must be attached to the decision or order. The individual who provides the interpretation services does not need to be the same individual who provided the interpretation services at the hearing.

(3) OAH or the BOA review judge must send a copy of a decision or order to an interpreter for use in oral interpretation.

NEW SECTION

WAC 110-03-0160 Notice of hearing. (1) When a hearing is requested, OAH sends the parties a written notice of the hearing or prehearing conference. A notice of a hearing must be sent to all parties and their representatives at least fourteen calendar days before the hearing date.

(2) The notice of hearing or prehearing conference will include:

(a) The names, mailing addresses, and telephone numbers of all parties and of their representatives;

(b) The name, mailing address, and telephone number of the ALJ;

(c) The date, time, place, and nature of the hearing or prehearing conference;

(d) The legal authority and jurisdiction for the hearing or prehearing conference; and

(e) The date of the hearing request.

(3) OAH will also send information with the notice of hearing or prehearing conference stating:

(a) If a party and the party's representative fail to attend or participate in a prehearing conference or a hearing, that party may lose the right to a hearing and the ALJ may enter an order of default or an order dismissing the case;

(b) If a party or witness needs a qualified interpreter because the party or witness is entitled to an interpreter under WAC 110-03-0110 and 110-03-0120, OAH will provide an interpreter at no cost to the party;

(c) Whether the hearing or prehearing conference is to be held by telephone or in person, and how to request a change in the way it is held;

(d) How to indicate any special needs for a party or witness; and

(e) How to contact OAH if a party or witness has a safety concern.

(4) If the hearing is scheduled as:

(a) An in-person hearing, an ALJ is physically present.

(b) A telephonic hearing, an ALJ is present by telephone.

(5) The ALJ and the parties may agree to shorten the amount of notice required by any rule.

(6) Any party may request that the proceeding be rescheduled and OAH must reschedule it if:

(a) A rule requires OAH to provide notice of a proceeding; and

(b) OAH does not provide the amount of notice required.

NEW SECTION

WAC 110-03-0170 Prehearing conferences. (1) A prehearing conference is a formal meeting that may be conducted by an ALJ before a full hearing. A prehearing conference may not be conducted in some cases. In others, more than one prehearing conference may be necessary.

(2) Either the ALJ orders a prehearing conference, or a party may request that the ALJ order a prehearing conference. If the ALJ decides to hold a prehearing conference, OAH sends notice of the time and date of the prehearing conference to all parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) An ALJ may convert a scheduled hearing into a prehearing conference and provide less than seven days' notice of the prehearing conference;

(b) OAH may provide less than seven business days' notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 110-03-0250.

(3) The ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(4) An ALJ may conduct the prehearing conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(5) Attendance by the parties or their representatives is mandatory. A party may lose the right to participate during the hearing if that party or his/her representative, if any, does not attend the prehearing conference. A party's appeal may be dismissed by the BOA if the party or the party's representative, if any, do not attend.

(6) Additional prehearing conferences may be requested by the parties or set by the ALJ to address procedural or other issues specific to the case.

NEW SECTION

WAC 110-03-0180 Purposes of prehearing conferences. (1) The purposes of the prehearing conferences are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference, the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify accommodation and safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including but not limited to, the DCYF notice of adverse action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve the document containing the names and phone numbers of witnesses and copies of all documents or other exhibits that will be presented at the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or DCYF rule;

(k) Consider a motion for summary judgment or other motion; or

(l) Determine any other procedural issues were raised by the parties.

(3)(a) If the parties resolve the dispute during the prehearing conference and put it in writing or present the agreement to the ALJ, the agreement may be legally enforceable.

(b) If the parties want the ALJ to consider any agreements or stipulations made at the prehearing conference, the parties must present them to the ALJ either before or during the hearing.

(c) If all the issues are resolved and the settlement agreement is in writing and signed by both parties, or presented verbally by both parties to the ALJ, the ALJ enters the settlement agreement into the record and the agreement constitutes a withdrawal of the appellant's hearing request.

NEW SECTION

WAC 110-03-0190 Prehearing order. (1) After the prehearing conference ends, the ALJ will send a prehearing order describing:

(a) The decisions made or actions taken during the conference;

(b) Any changes to DCYF's or other party's initial documents; and

(c) Any agreements reached.

(2) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(4) Prehearing orders are not final appealable orders of the department.

NEW SECTION

WAC 110-03-0200 Assignment and challenge of assignment of administrative law judge. (1) OAH assigns an ALJ at least five business days before the hearing and discloses that assignment in writing to the parties. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing.

(2) A party may file a motion of prejudice against an ALJ under RCW 34.12.050 and 34.05.425 by:

(a) Sending a written motion of prejudice at least three business days before the hearing and before the ALJ rules on a discretionary issue in the case;

(b) The motion of prejudice must include an affidavit that a party does not believe the ALJ can hear the case fairly;

(c) The party must send the request to the chief administrative law judge in care of the OAH field office where the ALJ works and send a copy of the request to all other parties or, if other parties are represented, to the representatives.

(3) The first timely request for a different ALJ under RCW 34.12.050 is automatically granted. Any later request may be granted or denied by the chief ALJ or a designee.

(4) A party may also request that an ALJ or BOA review judge be disqualified under RCW 34.05.425, for bias, prejudice, conflict of interest, or any other good cause or if one of the parties or a party's representative has an ex parte contact with the ALJ or BOA review judge by:

(a) Sending a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or BOA review judge. A party must promptly make the petition upon discovery of facts establishing grounds for disqualification.

(b) A party must send or deliver the petition to the ALJ or BOA review judge assigned to the case and send a copy of the petition to all other parties or, if other parties are represented, to the representatives. The ALJ or BOA review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

NEW SECTION

WAC 110-03-0210 Rules an ALJ or review judge must apply when making a decision. (1) ALJs and BOA review judges must first apply the DCYF rules adopted in the Washington Administrative Code.

(2) If no DCYF rule applies, the ALJ or BOA review judge must decide the issues according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, rules, and published appellate court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules in effect on the date of the DCYF action, unless otherwise required by other rule or law. If DCYF amends its notice of action, the ALJ or BOA review judge must apply the rules in effect on the date the amendment was made, unless otherwise required by other rule or law.

(4) When applying procedural rules, the ALJ and the BOA review judge must apply the rules that are in effect on the date the procedure is followed.

(5) The ALJ and the BOA review judge must apply the rules in this chapter beginning on the date each rule is effective.

NEW SECTION

WAC 110-03-0220 Challenges to validity of DCYF rules. (1) Neither an ALJ nor a BOA review judge may decide that a DCYF rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a DCYF rule is raised during the hearing, the ALJ or BOA review judge may allow argument for later court review.

NEW SECTION

WAC 110-03-0230 Amendment to DCYF notice or party's request for hearing. (1) The ALJ must allow DCYF to amend (change) the notice of a DCYF adverse action before or during the hearing to match the evidence and facts.

(2) If DCYF amends its notice, it must put the change in writing and give a copy to the ALJ and the other parties.

(3) The ALJ may allow an appealing party to amend a hearing request before or during the hearing to conform with an amended DCYF notice.

(4) If there is an amendment to either the DCYF notice or the appealing party's request for a hearing, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier DCYF notice or from the appealing party's request for hearing.

(5) If the ALJ grants a continuance, OAH must send a new hearing notice at least seven business days before the new hearing date.

NEW SECTION

WAC 110-03-0240 Changes of address. (1) Parties and representatives must tell DCYF and OAH, as soon as possible, when the party's or the representative's name, mailing address or telephone number changes.

(2) If OAH and DCYF are not notified of a change in a party's or a representative's mailing address and either DCYF or OAH continues to send documents to the address stated in the file, the ALJ and DCYF may assume the documents were received.

NEW SECTION

WAC 110-03-0250 Continuances. (1) Any party may request a continuance either verbally or in writing.

(2) Before contacting the ALJ to request a continuance, a party may contact the other parties, if possible, to find out if they will agree to a continuance.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agree to the continuance.

(a) If the parties agree to a continuance, the ALJ will grant the request, unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant or deny the request for continuance.

(4) If a request for continuance is granted, OAH will send written notice of the changed time and date of the hearing.

NEW SECTION**WAC 110-03-0260 Orders of dismissal and default.**

(1)(a) An order of dismissal is an order sent by the ALJ to end the hearing. The order may be based on a request for dismissal made by the department, request for dismissal based on an agreement by the parties, or because the party who requested the hearing withdrew the request, failed to appear, or refused to participate.

(b) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to participate, the DCYF decision must be the final decision.

(c) If the hearing is dismissed due to a written agreement between the parties, the parties must comply with the agreement.

(2)(a) An order of default may be entered when the appealing party fails to attend a scheduled prehearing conference or hearing. The order of default will include an inquiry as to whether the appealing party wants to petition to reinstate the hearing.

(b) The appealing party may file a request to vacate an order of default under WAC 110-03-0270.

(c) An order of default becomes a final order dismissing the appealing party's request for a hearing if the appealing party does not file a request to vacate within twenty-one calendar days of the order being served (mailed) on the parties.

(d) The DCYF action must remain in effect and be the final action after an order of default becomes a final order.

NEW SECTION

WAC 110-03-0270 Vacating an order of default or order of dismissal. (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal.

(a) A request to vacate an order must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was mailed. If no request is received within that deadline, the order becomes a final order.

(b) The request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(2) OAH will schedule a hearing on the request to vacate the order.

(3) At the hearing, the ALJ will receive evidence and argument from the parties on whether there is good cause for an order of default to be vacated.

(4) The ALJ will vacate an order of dismissal and reinstate the hearing if the defaulted party shows good cause or if the DCYF representative agrees to waive the deadline.

(5) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

(6) A party may make a late request to vacate the order of dismissal for up to one year after it was mailed but they must show good cause according to WAC 110-03-0020 for the late request to be accepted and the dismissal to be vacated.

(7) If a party requests to vacate an order more than one year after it was mailed, the ALJ may vacate the order of dismissal if the DCYF representative and any other party agrees to waive (excuse) the deadline.

NEW SECTION

WAC 110-03-0280 Stay of DCYF action. The appealing party may request that an ALJ or review judge stay (stop) a DCYF action until there is a decision entered by the ALJ or review judge. Stay of summary suspension of child care license actions are governed by WAC 110-03-0290.

NEW SECTION

WAC 110-03-0290 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a child care license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) Pursuant to WAC 110-03-0040, 110-03-0050, and 110-03-0280 a licensee may request a hearing to challenge the decision to summarily suspend a license. A licensee who contests a summary suspension of a license may obtain a stay of the effective date of the suspension only as set forth in this section.

(3) It is the licensee's burden to establish that the stay is in the public interest and is made for good cause.

(4) The licensee's request for a stay of the summary suspension must be made by filing a motion for stay of summary suspension. The motion for stay of summary suspension must

be filed with the initial request for hearing, or by subsequent motion. The motion for stay, and documents and pleadings described in subsection (5) of this section, must be served on the office of administrative hearings and attorney general's office by noon on the seventh day before the hearing, unless a shorter time is ordered. Reply affidavits or declarations must be served on the licensee's attorney, or representative, by noon on the day prior to the hearing. If unrepresented, the reply affidavits or declarations must be served on the licensee.

(5) The motion for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based. The decision to grant or deny the request for a stay must be based on:

- (a) Legal authority; and
- (b) Affidavits or declarations signed under penalty of perjury.

(6) The ALJ must not allow the presentation of oral testimony at a stay hearing except under the following circumstances:

(a) The party seeking the opportunity to offer oral testimony must file a motion for permission to offer oral testimony. The decision to grant or deny the motion must be based on affidavits filed in support of or opposition to the motion to offer oral testimony.

(b) Oral testimony must only be permitted if substantial evidence has been presented establishing that the failure to allow oral testimony will deny the moving party the opportunity for a fair stay hearing.

(7) Upon receipt of a motion for a stay, the ALJ must schedule a hearing on the motion, not less than seven days from the date the request is received by the office of administrative hearings.

(8) The ALJ must not grant the motion for stay unless the ALJ makes specific findings that the stay is in the public interest and is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the merits of the licensing action;

(b) The licensee will suffer irreparable injury if the stay is not granted;

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license; and

(d) Economic hardship itself is an insufficient reason for a finding of irreparable injury under (b) of this subsection.

(9) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a motion for stay, will expedite the hearing and decision on the merits.

(10) The decision on the motion for stay is subject to review by the BOA at the request of either DCYF or the licensee. The request for review must be filed not later than seven days following the date the decision on the motion for stay is mailed by OAH to the parties.

(11) The BOA review judge must promptly determine a request for review. The BOA review judge's decision on the request for review, regarding the motion for stay, must not be subject to judicial review.

NEW SECTION

WAC 110-03-0300 Conduct of hearings. (1) Hearings may be held in person or by telephone conference or other electronic means.

(a) A telephone conference hearing is where all parties appear by telephone.

(b) An in-person hearing is where you appear face-to-face with the ALJ and the other parties appear either in person or by telephone.

(2) Parties and their witnesses may appear in person or by telephone conference. The ALJ may require parties or their witnesses to appear in person if the ALJ determines there is a compelling reason and the compelling reason is stated in a hearing notice or prehearing order.

(3) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony, and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served in advance of the hearing.

(5) All hearings must be recorded.

NEW SECTION

WAC 110-03-0310 Authority of the administrative law judge. (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing. The ALJ's authority is limited to determining whether the sanction imposed or action taken by the department was warranted or justified under the evidence presented during the hearing. The ALJ does not have authority to substitute or impose an alternative sanction, remedy, or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and admit relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.-452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default pursuant to RCW 34.05.-440;

- (n) Hold prehearing conferences;
 - (o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;
 - (p) Decide whether a party has a right to a hearing;
 - (q) Permit and regulate the taking of discovery;
 - (r) Consider granting a stay if authorized by law or DCYF rule; and
 - (s) Take any other action necessary and authorized by any applicable statute or rule.
- (3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for the hearing if they involve common issues or parties.
- (4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that the waiver:
- (a) Is necessary to avoid manifest injustice to the unrepresented party; and
 - (b) Would not prejudice any other party.
- (5) The ALJ must make findings of fact based on the preponderance of the evidence standard, unless otherwise required by law.
- (6) The ALJ's authority is limited to those powers granted by statute or rule. The ALJ has no inherent or common law powers.

NEW SECTION

WAC 110-03-0320 Order of the hearing. (1) At the hearing, the ALJ:

- (a) Explains the rights of the parties;
 - (b) Marks and admits or rejects exhibits;
 - (c) Sustains or overrules objections made by the parties, as provided by law;
 - (d) Ensures that a record is made;
 - (e) Explains that a decision is mailed after the hearing; and
 - (f) Notifies the parties of appeal rights.
- (2) The parties may:
- (a) Make opening statements to explain the issues;
 - (b) Offer evidence to prove their positions, including oral or written statements of witnesses;
 - (c) Question the witnesses presented by the other parties; and
 - (d) Give closing arguments about what the evidence shows and what laws apply.
- (3) The record is closed at the end of the hearing if the ALJ does not allow more time to offer evidence.

NEW SECTION

WAC 110-03-0330 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties offer during the hearing to help prove their positions.

- (2) Evidence may include all or parts of original documents or copies of the originals.
- (3) If a witness cannot appear, a party may offer as evidence statements signed by the witness that are under oath or affirmation.

- (4) The ALJ may give more weight to testimony that is subject to cross-examination by the other parties.
- (5) The ALJ's decision will only be based on admissible evidence.

NEW SECTION

WAC 110-03-0340 Introduction of evidence into the record. (1) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

- (a) They have good cause for missing the deadline; or
 - (b) The other parties agree to waive the deadline.
- (2) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. Hearsay evidence is admissible if in the judgment of the ALJ it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.
- (3) The ALJ may reject evidence, if it:
- (a) Is not relevant;
 - (b) Repeats evidence already admitted;
 - (c) Is from a privileged communication protected by law;
- or
- (d) Is otherwise legally improper.

(4) Where the department's notice of adverse action alleges the person lacks the character to provide for the needs of any child in care or to have unsupervised access to any child in care, evidence regarding character or reputation must be admissible. In all other proceedings, evidence regarding character or reputation must be admissible as provided by law. In cases where such evidence is admissible, the ALJ must exercise reasonable control over the number of character witnesses so as to avoid duplication of testimony and evidence and needless consumption of time.

NEW SECTION

WAC 110-03-0350 Objections to evidence. (1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit or offer argument about how much weight the ALJ should give the exhibit.

- (2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.
- (3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.
- (4) If a witness refuses to answer any question ruled proper by the ALJ, the ALJ may reject all of the related testimony of that witness.

NEW SECTION

WAC 110-03-0360 Stipulations. (1) A stipulation is an agreement among two or more parties that certain facts or evidence are correct or authentic.

(2) If an ALJ accepts a stipulation, the ALJ must enter the stipulation into the record.

(3) A stipulation may be made before or during the hearing.

NEW SECTION

WAC 110-03-0370 Proposed exhibits. (1) Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. If the exhibit is admitted into evidence by the ALJ, the exhibit will be considered by the ALJ in reaching his or her decision.

(2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.

(3) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(4) The ALJ may also exclude proposed exhibits from the record.

NEW SECTION

WAC 110-03-0380 Judicial notice. (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code or standard of practice.

(2) An ALJ may consider and admit evidence by taking judicial notice.

(3) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

WAC 110-03-0390 Witnesses. (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Witnesses may include:

(a) The appealing party or a DCYF representative; and

(b) Anyone a party or the ALJ asks to be a witness.

(4) The ALJ decides who may testify as a witness.

(5) Unless DCYF agrees, a current or former DCYF employee may not be an expert witness against DCYF if that employee was actively involved in the case while working for DCYF, or if that employee was actively involved in the case while working for the department of early learning or the children's administration on or before June 30, 2018.

NEW SECTION

WAC 110-03-0400 Requiring witnesses to testify or provide documents. (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony or to provide books, documents, or other items.

(2) ALJs, DCYF, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf:

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena;

(b) There is no cost to prepare a subpoena, but a party may have to pay for:

(i) Serving a subpoena;

(ii) Complying with a subpoena; and

(iii) Witness fees according to RCW 34.05.446(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

NEW SECTION

WAC 110-03-0410 Serving a subpoena. (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement that includes the following:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

WAC 110-03-0420 Testimony. (1) Direct examination. All witnesses may be asked questions by the party that calls the witness to testify. Each witness:

(a) Must affirm or take an oath to testify truthfully during the hearing;

(b) May testify in person, or by telephone if approved by the ALJ;

(c) May request interpreters from OAH at no cost to the parties;

(d) May be subpoenaed and ordered to appear according to WAC 110-03-0400.

(2) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(3) If a party has a representative, only the representative, not the party, may question the witness.

(4) The ALJ may also question witnesses.

(5) Witnesses may refuse to answer questions. However, if a witness refuses to answer a question, the ALJ may reject all of the related testimony of that witness.

NEW SECTION

WAC 110-03-0430 Burden of proof and standard of proof. (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless a rule or the law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden of proof.

NEW SECTION

WAC 110-03-0440 Equitable estoppel. (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent DCYF from taking some action against a party, such as collecting an overpayment. Equitable estoppel may not be used to require DCYF to continue to provide something, such as benefits, services, or a license, or to require the department to take action contrary to a statute.

(2) Equitable estoppel contains five elements, all of which must be proved by clear and convincing evidence:

(a) DCYF made a statement or took action or failed to take action, which is inconsistent with its later claim or position regarding an overpayment;

(b) The appealing party relied on DCYF's original statement, action or failure to act;

(c) The appealing party will be injured if DCYF is allowed to contradict the original statement, action or failure to act;

(d) Equitable estoppel is needed to prevent a manifest injustice; and

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel described in subsection (2) of this section have been proved by clear and convincing evidence, DCYF is estopped or prevented from taking action or enforcing its claim for repayment of the overpayment.

NEW SECTION

WAC 110-03-0450 Closing the record. When the record is closed, no more evidence may be taken, without a showing of good cause. The record is closed:

(1) At the end of the hearing if the ALJ does not allow more time to offer evidence or argument; or

(2) After the deadline set by the ALJ for offering evidence or argument has passed.

NEW SECTION

WAC 110-03-0460 Timing of the ALJ's decision. (1) After the record is closed, the ALJ must write an initial order and send copies to the parties.

(2) The maximum time an ALJ has to send an initial order is ninety calendar days after the record is closed.

(3) OAH must send the official record of the proceedings to the BOA. The record must be complete when it is sent and include all parts required by WAC 110-03-0480.

NEW SECTION

WAC 110-03-0470 Contents of the hearing record.

(1) The administrative law judge must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing orders;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

NEW SECTION

WAC 110-03-0480 Contents of the initial order. The ALJ's initial order must:

(1) Identify the hearing decision as a DCYF case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the specific facts determined to exist by the ALJ, based on the hearing record, and relied on by the ALJ in resolving the dispute;

(4) Explain why evidence is credible when the facts or conduct of a witness is in question;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result;

(9) Explain how to request corrections to the initial order or how to request a petition for review by the BOA and provide deadlines for such requests;

(10) State the date the decision becomes final; and

(11) Include any other information required by law or DCYF program rules.

NEW SECTION

WAC 110-03-0490 Finality of initial order. If no one timely requests review of the initial order or if a review request is dismissed, the initial order becomes the DCYF final decision twenty-one calendar days after the date it is mailed to the parties by OAH.

NEW SECTION

WAC 110-03-0500 Correcting clerical errors in ALJ's decisions. (1) A clerical error is a mistake that does not change the result or intent of the decision. Some examples of clerical errors are:

- (a) Missing or incorrect words or numbers;
 - (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 2081, instead of May 3, 2018; or
 - (c) Math errors when adding the total of an overpayment.
- (2) If a party disagrees with an ALJ's initial order because of a clerical error, the party may ask for a corrected decision from the ALJ. A party may ask for a corrected ALJ decision by making the request in writing and sending it to the OAH office that held the hearing. A copy of the request must be sent to the other parties or their representatives.
- (3) A request to correct a clerical error must be made within ten days of the date the decision was mailed to the parties by OAH.

(4) When asking for a corrected decision, a party must clearly identify the clerical error.

(5) When a party requests a corrected initial or final order, the ALJ must either:

- (a) Send all parties a corrected order; or
- (b) Deny the request within three business days of receiving it.

(6) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(7) If the ALJ denies the request for a corrected initial order and a party does not request review, the initial order becomes final twenty-one calendar days after the original initial order was mailed.

(8) Requesting a corrected initial order for a case does not extend the deadline to request review of the initial order by the review judge.

NEW SECTION

WAC 110-03-0510 Review of the initial order. (1) If a party disagrees with or wants a change in an initial order, other than correcting a clerical error, he or she may seek review of the initial order with the BOA.

(2) A party must request review of an initial order from the BOA as provided in WAC 110-03-0520 through 110-03-0540.

(3) If more than one party requests review, each request must meet the deadlines described in WAC 110-03-0520.

(4) Before deciding if the initial order should be affirmed, reversed, or remanded for further proceedings the

BOA review judge will consider the request, the initial order, and record.

(5) Any party may request that the BOA review an initial order.

(6) BOA review judges may not review final orders entered by an ALJ.

NEW SECTION

WAC 110-03-0520 Time for requesting review of initial order. (1) The BOA must receive the written petition for review on or before the twenty-first calendar day after the initial order was mailed. A party may submit the review request by facsimile transmission (fax), but only if the party also submits the request by mail.

(2) A BOA review judge may extend the deadline if a party:

- (a) Asks for more time before the deadline expires; and
 - (b) Shows good cause for requesting more time.
- (3) The BOA may accept a review request after the twenty-one calendar day deadline only if:
- (a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and
 - (b) A party shows good cause for missing the deadline.

NEW SECTION

WAC 110-03-0530 Petition for review of initial order. (1) A party must make the review request (petition for review) in writing and clearly identify the:

- (a) Parts of the initial order with which the party disagrees; and
- (b) Arguments or evidence supporting the party's position.

(2) The petition for review must be filed with the BOA, and the BOA sends a copy to the other parties, their representatives and OAH.

(3) The BOA can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial order:

DCYF Board of Appeals
1500 Jefferson St.
P.O. Box 40975
Olympia, WA 98504-0975

NEW SECTION

WAC 110-03-0540 Response to petition for review of initial order. (1) A party does not have to respond to the review request.

(2) If a party responds, that party must send the response so that the BOA receives it on or before the seventh business day after the date a copy of the petition for review was mailed to the party by the BOA.

(3) The responding party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, the party must contact the BOA by the deadline in subsection (2) of this section and show good cause for an extension of time.

(5) The BOA may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

WAC 110-03-0550 Board of appeals decision process. (1) After the response deadline, the record on review is closed unless there is a good cause to keep it open or to reopen the record.

(2) A BOA review judge is assigned by the BOA to review the initial order after the record is closed. The BOA review judge only considers evidence given at the original hearing unless the review judge has reopened the record pursuant to subsection (1) of this section.

(3) The BOA review judge will decide the appeal without oral argument, unless the BOA review judge determines that oral argument is necessary for resolution of the appeal.

(4) The BOA review judge enters a final order that affirms, changes, dismisses, or reverses the initial order, or remands (returns) the case to the administrative law judge for further specified action.

NEW SECTION

WAC 110-03-0560 Authority of the board of appeals review judge. (1) The BOA review judge reviews initial orders and enters final orders. The BOA review judge has the same decision-making authority as the ALJ. The BOA review judge considers the entire record and decides the case de novo (anew). In reviewing the findings of fact, the BOA review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) BOA review judges may return (remand) cases to the OAH for further action.

(3) A BOA review judge's authority is limited to those powers conferred (granted) by statute or rule. The BOA review judge has no inherent or common law powers.

(4) The BOA review judge's order is the DCYF final order in the case. If the BOA review judge's final order upholds the department's adverse action, the appealing party must comply with the final order unless the appealing party obtains a stay of the effectiveness of the final order from the superior court after filing a petition for judicial review in accordance with WAC 110-03-0590.

NEW SECTION

WAC 110-03-0570 Reconsideration. (1) Reconsideration is:

(a) Asking an ALJ to reconsider a final order entered by the ALJ because the party believes the ALJ made a mistake; and

(b) Asking a BOA review judge to reconsider a final order entered by a BOA review judge because the party believes the BOA review judge made a mistake.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before requesting judicial review. However, a request for reconsideration of a final order is not a precursor to requesting judicial review.

(3) The request for reconsideration should identify the parts of the final order with which the party disagrees and should identify the evidence in the hearing record supporting the party's position.

(4) A party does not have to respond to a request for reconsideration.

(5) If a party responds, that party must send a response to the ALJ or BOA review judge by or before the seventh business day after the date OAH or the BOA review judge mailed the request to the party.

(6) A party must send a copy of the response to any other party or representative.

(7) If a party needs more time to respond, OAH or the review judge may extend the deadline if the party demonstrates good cause for an extension within the deadline in subsection (5) of this section.

(8) The request for reconsideration must be filed with the BOA, and the BOA sends a copy to the other parties, their representatives and OAH.

NEW SECTION

WAC 110-03-0580 Ruling on request for reconsideration. (1) After the ALJ or BOA review judge receives a reconsideration request, the ALJ or BOA review judge has twenty calendar days to enter and serve a reconsideration decision unless the ALJ or BOA review judge sends notice that additional time is required.

(2) After the ALJ or BOA review judge receives a reconsideration request, the ALJ or BOA review judge must either:

(a) Write a reconsideration decision; or

(b) Serve all parties an order denying the request.

(3) If the ALJ or BOA review judge does not dispose of the petition or send the parties written notice setting a date by which the ALJ or BOA review judge will act on the petition within twenty days of receipt of the reconsideration request, the request is denied.

(4) The ALJ or BOA review judge decision on reconsideration is final when the decision is mailed or the date the request is denied.

NEW SECTION

WAC 110-03-0590 Judicial review. (1) Judicial review is the process of appealing a final order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing in superior court pursuant to RCW 34.05.514 a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date the review judge mails the final order in the case. Copies of the petition must be served on DCYF, the office of the attorney general, and all other parties.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA. The petition must be hand delivered or mailed with proof of receipt. The physical location of the secretary is:

DCYF Office of the Secretary
1150 Jefferson St.
Olympia, WA 98504-0975

The mailing address of the secretary is:

DCYF Office of the Secretary
P.O. Box 40975
Olympia, WA 98504-0975

The physical and mailing address for the DCYF BOA are in WAC 110-03-0530.

(4) To serve the office of the attorney general and other parties, a copy of the petition for judicial review must be sent by regular mail. The office of the attorney general may be served by hand delivery at:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

(5) Generally, a party may file a petition for judicial review only after it has completed the administrative hearing process. See RCW 34.05.534.

(6) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

(7) RCW 34.05.510 through 34.05.598 contain further details of the judicial review process.

WSR 18-22-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-309—Filed October 30, 2018, 4:50 p.m., effective October 30, 2018, 4:50 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound salmon management and catch reporting areas.

Citation of Rules Affected by this Order: Amending WAC 220-301-030.

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 correct an error in the line between Puget Sound Salmon Management and Catch Reporting Areas 12B and 12C. The permanent rule was filed as WSR 18-18-078 filed on September 4, 2018. There is insufficient time to adopt permanent rules.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 30, 2018.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-301-03000A Puget Sound salmon management and catch reporting areas. Notwithstanding the provisions of WAC 220-301-030, effective immediately until further notice:

(1) **Area 12B** shall include those waters of Puget Sound southerly of a line projected true east from Pulali Point (47°44'15.3"N, 122°52'5.9"W) to landfall on Toandos Peninsula (47°44'09.9"N, 122°48'23.1"W), northerly of a line projected true east from Ayock Point (47°30'25.8"N, 123°03'16.2"W) to landfall on the Kitsap (Great) Peninsula (47°30'25.8"N, 123°01'53.2"W), and westerly of a line projected from the Tskutsko Point Light (Light List No. 17865 F14s15ft5MRaRef, 47°41'29.3"N, 122°49'59.1"W) to Misery Point (47°39'18.3"N, 122°49'46.5"W).

(2) **Area 12C** shall include those waters of Puget Sound southerly of a line projected true east from Ayock Point (47°30'25.8"N, 123°03'16.2"W) to landfall on the Kitsap (Great) Peninsula (47°30'25.8"N, 123°01'53.2"W) and northerly and westerly of a line projected from Ayres Point (47°22'26.9"N, 123°06'44.5"W) to the Union Boat Launch (47°21'27.5"N, 123°6'1.9"W).

WSR 18-22-050
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed October 31, 2018, 8:04 a.m., effective November 1, 2018]

Effective Date of Rule: November 1, 2018.

Purpose: As directed by the legislature, effective November 1, 2018, the agency is implementing a premium assistance program for Pacific Islanders residing in Washington under a compact of free association (COFA).

Citation of Rules Affected by this Order: New chapter 182-524 WAC.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SSB 5683, 65th legislature, 2018 regular session.

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: This emergency is necessary to comply with the requirements in SSB 5683, which directed the agency to implement a premium assistance program for Pacific Islanders residing in Washington under COFA. The first open enrollment period for the COFA premium assistance program begins no later than November 1, 2018. The agency is currently working through the permanent rule-making process for these rules. The preproposal statement of inquiry was filed under WSR 18-12-029 on May 29, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 0, Repealed 0.

Date Adopted: October 31, 2018.

Wendy Barcus
Rules Coordinator

Chapter 182-524 WAC

COFA ISLANDER HEALTH CARE

NEW SECTION

WAC 182-524-0100 General. Compact of Free Association (COFA) islander health care is a state-funded program administered by the health care authority (the agency) to pay the monthly premiums and out-of-pocket expenses for silver level qualified health plans for eligible COFA islanders.

For the purpose of this chapter, "our," "us," and "we" refer to the agency or the agency's designee and "you" refers to the applicant for, or recipient of, COFA islander health care.

You have the right to appeal any adverse agency action regarding COFA islander health care as described in chapter 182-526 WAC.

NEW SECTION

WAC 182-524-0200 Definitions. This section defines terms used in this chapter. See chapter 182-500 WAC for additional definitions.

"Advance premium tax credit (APTC)" - A tax credit taken in advance to lower a monthly health insurance payment (or premium).

"COFA islander" - A person who is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

"COFA islander health care" - An agency-administered program that pays the premium and out-of-pocket costs for a silver level qualified health plan for eligible COFA islanders.

"Compact of Free Association (COFA)" - A legal agreement between the government of the United States and the governments of the Federated States of Micronesia (U.S. Pub. L. 108-188); the Republic of the Marshall Islands (U.S. Pub. L. 108-188); and the Republic of Palau (U.S. Pub. L. 99-658).

"Cost-sharing funds" - Agency-provided funds for out-of-pocket costs.

"Out-of-pocket costs" - Copayments, coinsurance, deductibles, and other cost-sharing requirements imposed under a qualified health plan for services, pharmaceuticals, devices, and other health benefits covered by the plan and rendered as in-network. Excludes premiums, balance billing amounts for out-of-network providers, and spending for non-covered services.

"Premium cost" - A person's premium for a qualified health plan, minus the amount of the person's advanced premium tax credit.

"Silver level qualified health plan (QHP)" - Silver level indicates the category of a qualified health plan (QHP) offered by the Washington health benefit exchange (HBE). For a definition of QHP, see WAC 182-500-0090.

NEW SECTION

WAC 182-524-0300 Eligibility. In order to be eligible for state-funded COFA islander health care, you must enroll in a silver level qualified health plan (QHP) through the Washington health benefit exchange (HBE) during open enrollment or when you qualify for a special enrollment period as described in 45 C.F.R. 155.410 and 45 C.F.R. 155.420.

(1) You are eligible for state-funded COFA islander health care administered by us no earlier than January 1, 2019, if you:

- (a) Are a COFA islander;
- (b) Meet the residency requirements as described under WAC 182-524-0400;
- (c) Have household income, as defined under 26 C.F.R. 1.36B-1(e), under one hundred thirty-three percent of the federal poverty level (FPL);
- (d) Do not qualify for another federal or state medical assistance program as described under chapter 74.09 RCW, which provides minimum essential coverage such as Washington apple health for adults;
- (e) Qualify for, and accept, the maximum advance premium tax credit available under 45 C.F.R. 155.305(f); and
- (f) Enroll in a silver level QHP.

(2) Eligibility for COFA islander health care is subject to the availability of amounts appropriated for this specific purpose.

(3) You may be disenrolled from COFA islander health care if you:

(a) Do not meet the eligibility criteria under subsection (1) of this section;

(b) Fail to remain enrolled in a silver level QHP; or

(c) Withdraw your application or request a termination of coverage.

(4) You may be disqualified from COFA islander health care if you:

(a) Perform an act, practice, or omission that constitutes fraud, and an insurer rescinds your QHP policy; or

(b) Use your COFA islander health care cost-sharing funds to purchase anything other than out-of-pocket costs.

(5) Your COFA islander health care begins the first day of the month you meet the eligibility requirements as described in subsection (1) of this section.

(6) Your COFA islander health care ends the day your enrollment in a silver level QHP ends or the last day of the month your COFA islander health care eligibility ends, whichever is earlier.

NEW SECTION

WAC 182-524-0400 Residency requirements. (1)

This section applies only to residency requirement for COFA islander health care.

(2) A resident is a person who currently lives in Washington and:

(a) Intends to reside here, including people without a fixed address; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(3) You do not need to live in the state for a specific period of time to meet the requirements in subsection (1) of this section.

(4) You can be temporarily out-of-state and remain on COFA islander health care if you:

(a) Intend to return once the purpose of your absence concludes; and

(b) Meet the eligibility requirements as described under WAC 182-524-0300.

NEW SECTION

WAC 182-524-0500 Notice requirements. (1)

This section applies only to notices and letters that we send regarding COFA islander health care.

(2) We send you written notices (letters) when we:

(a) Approve you for COFA islander health care;

(b) Deny you for COFA islander health care;

(c) Change or terminate your eligibility from COFA islander health care; and

(d) Ask you for more information.

(3) All written notices we send to you include:

(a) The date of the notice;

(b) Specific contact information for you if you have questions or need help with the notice;

(c) The nature of the action;

(d) The effective date of the action;

(e) The facts and reasons for the action;

(f) Your appeal rights, if an appeal is available; and

(g) Other information required by the state.

(4) If we request information from you, we allow at least ten calendar days for you to submit requested information.

(a) If the due date falls on a weekend or a legal holiday as described in RCW 1.16.050, the due date is the next business day.

(b) We do not deny or terminate your eligibility when we ask you to provide information.

(c) If we do not receive your information by the due date, we make a determination based on all the information available.

(5) We send a written notice to you at least ten days before taking any adverse action. The ten-day notice period starts on the day we send the notice.

(6) We may send a notice fewer than ten days before the date of the action if:

(a) You request the action;

(b) You request termination;

(c) A change in statute, federal regulation, or administrative rule is the sole cause of the action;

(d) You are incarcerated and expect to remain incarcerated at least thirty days;

(e) Mail sent to you is returned without a forwarding address and we do not have a more current address for you;

(f) You move out-of-state;

(g) You move to a county where your current silver level qualified health plan (QHP) is not available and you fail to select a new plan;

(h) You are eligible for medicare;

(i) You die;

(j) You begin receiving other state or federal medical assistance, which provides minimum essential coverage; or

(k) Your silver level QHP is closed.

NEW SECTION

WAC 182-524-0600 Payments. (1) We pay your silver level qualified health plan (QHP) premium costs directly to the QHP carrier unless we determine good cause exists to reimburse you for the premium costs.

(2) We pay your mandatory out-of-pocket costs separate from your premium costs through cost-sharing funds.

(3) Cost-sharing funds are only for your out-of-pocket costs.

(4) We will not pay for, or reimburse you for, costs not considered as out-of-pocket costs or expenses incurred by people not covered under COFA islander health care.

(5) You are responsible for ensuring the services you receive are covered under your QHP and rendered as in-network.

(6) We may stop payments of your silver level QHP premium costs and your cost-sharing funds when you:

(a) Fail to provide verification of payments through us or an agency-contracted vendor;

(b) Fail to respond to a request for information from us or an agency-contracted vendor;

- (c) Misuse your cost-sharing funds by:
- (i) Purchasing anything not considered an out-of-pocket cost; or
 - (ii) Allowing another person access to your cost-sharing funds.
- (d) Are no longer eligible for COFA islander health care as described under WAC 182-524-0300.
- (7) You must follow the requirements of any agency-contracted vendor that provides services enabling you to access your cost-sharing funds.
- (8) We monitor payments and cost-sharing transactions under COFA islander health care.

WSR 18-22-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-307—Filed October 31, 2018, 8:56 a.m., effective November 1, 2018]

Effective Date of Rule: November 1, 2018.

Purpose: Extends the recreational fishing season in Padden Lake (Whatcom Co.).

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

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

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

Reasons for this Finding: The Washington department of fish and wildlife (WDFW) stocked one thousand one hundred catchable-size rainbow trout for a heritage fishing day event conducted by the Sportsman's Alliance Foundation. There are many of the fish left over in the lake and WDFW is extending the season providing additional angling opportunity through the holidays. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 31, 2018.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000B Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective November 1, 2018 through January 6, 2019, it is permissible to fish for gamefish in those waters of Padden Lake (Whatcom Co.). Statewide minimum size and daily limits apply.

REPEALER

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

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

WSR 18-22-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-301—Filed October 31, 2018, 12:40 p.m., effective November 15, 2018]

Effective Date of Rule: November 15, 2018.

Purpose: Amend recreational coastal crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000E; and amending WAC 220-330-040.

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

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

Reasons for this Finding: This emergency rule is needed to revise the date when recreational anglers can use pot gear in Marine Area 2-1 (Willapa Bay). This rule will allow recreational pot gear to be used two weeks earlier starting on November 15, 2018, which will provide additional opportunity to recreational anglers. This rule is interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: October 31, 2018.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000E Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective November 15, 2018, until further notice, it is permissible to fish for and possess crab taken for personal use with shellfish pot gear from Marine Area 2-1 (Willapa Bay). Open to gear other than shellfish pot gear year-round.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 27, 2018:

WAC 220-330-04000E Crab—Areas and seasons—Personal use.

**WSR 18-22-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-310—Filed October 31, 2018, 2:08 p.m., effective November 1, 2018]

Effective Date of Rule: November 1, 2018.

Purpose: Amends fishing regulations for the Dungeness River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000J.

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

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

Reasons for this Finding: This emergency rule is needed to reopen fisheries of the lower Dungeness River to permanent rule. The fishery was closed to help ensure that hatchery coho broodstock needs would be achieved. With recent rains, river discharge has increased significantly resulting in good numbers of coho entering the hatchery and giving certainty that broodstock needs will be met. There is insufficient time to adopt permanent rules.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 31, 2018.

Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective November 01, 2018:

WAC 220-312-02000J Freshwater exceptions to statewide rules—Puget Sound. (18-310)

**WSR 18-22-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-311—Filed November 2, 2018, 4:29 p.m., effective November 2, 2018, 4:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial salmon fishing rules in Hood Canal.

Citation of Rules Affected by this Order: Amending WAC 220-354-160 and 220-354-120.

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: In order not to exceed non-treaty harvestable shares of chum, a shortened hour purse seine opening and a closure of any future gillnet and purse seine openings is needed. This rule closes gillnet fisheries in Hood Canal and allows for a limited purse seine opening before closing for the remainder of the season. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: November 2, 2018.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000K Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective immediately through November 26, 2018, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B, 12C	Closed

NEW SECTION

WAC 220-354-12000I Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective November 5 through November 27, 2018, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B, 12C	9 AM - 2 PM 11/5

**WSR 18-22-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-313—Filed November 2, 2018, 4:30 p.m., effective November 5, 2018]

Effective Date of Rule: November 5, 2018.

Purpose: Amends Puget Sound commercial purse seine and gillnet fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-354-120 and 220-354-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.045 [77.12.045], and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to close commercial salmon fishing to gillnet and purse seine gear in Puget Sound Salmon Management and Catch Reporting Area 8D due to low hatchery returns. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: November 2, 2018.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000J Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective November 5, 2018, until further notice, it is unlawful to fish for commercial purposes with purse seine gear in Puget Sound Salmon Management and Catch reporting Area 8D.

NEW SECTION

WAC 220-354-16000L Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective November 5, 2018, until further notice, it is unlawful to fish for commercial purposes with gillnet gear in Puget Sound Salmon Management and Catch reporting Area 8D.

**WSR 18-22-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-308—Filed November 2, 2018, 4:31 p.m., effective November 2, 2018, 4:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000S; and amending WAC 220-330-160.

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 open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 3, 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 2, 2018.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000S Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. November 8, 2018 through 11:59 p.m. November 11, 2018, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. November 9, 2018 through 11:59 p.m. November 9, 2018 and 12:01 p.m. November 11, 2018 through 11:59 p.m. November 11, 2018 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. November 8, 2018 through 11:59 p.m. November 8, 2018 and 12:01 p.m. November 10, 2018 through 11:59 p.m. November 10, 2018, razor clam dig-

ging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) It is unlawful to dig for razor clams at any time in the Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 12, 2018:

WAC 220-330-16000S Razor clams—Areas and seasons.

**WSR 18-22-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-314—Filed November 3, 2018, 10:53 a.m., effective November 3, 2018, 10:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial purse seine seasons in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000I; and amending WAC 220-354-120.

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

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

Reasons for this Finding: This rule is needed to amend a previous emergency rule to conform to agreements with comanagers by closing the nontreaty purse seine season in Area 12C immediately. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 3, 2018.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000K Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective November 5 through November 27, 2018, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B	9 AM - 2 PM 11/5
12C	Closed

REPEALER

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

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

**WSR 18-22-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-316—Filed November 5, 2018, 1:02 p.m., effective November 6, 2018]

Effective Date of Rule: November 6, 2018.

Purpose: Amend commercial gillnet rules for Puget Sound Catch Reporting Areas 10 and 11.

Citation of Rules Affected by this Order: Amending WAC 220-354-160.

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

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

Reasons for this Finding: This rule is needed to conform to agreements with comanagers by allowing an extra hour of gillnet fishing in Catch Reporting Areas 10 and 11. The scheduled purse seine opening for November 7 has been cancelled. Because there is no gear conflict with purse seines, per preseason agreement, fishers with gillnet gear gain one extra hour of fishing. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 5, 2018.

Kelly Cunningham
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000M Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective November 6 through November 7, 2018, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
10,11	4 PM 11/6 - 8 AM 11/7

**WSR 18-22-114
EMERGENCY RULES
DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)

[Filed November 6, 2018, 10:54 a.m., effective November 6, 2018, 10:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-840-035 Initial licensure for registered nurses, regarding nurses who complete out-of-state nontraditional nursing education (repeal) and WAC 246-840-048 Students enrolled in a nontraditional nursing program (new). The nursing care quality assurance commission (commission) repeals WAC 246-840-035 because the legislature repealed the authorizing statute. The commission also creates a new section of rules addressing the needs of students effected by the repeal of RCW 18.79.380. This fourth emergency rule making, with the exact same rule language, replaces the third emergency rule filed on July 30, 2018, as WSR 18-16-085. Permanent rule making has been initiated with a CR-101 filed on February 23, 2018, as WSR 18-06-009, and a CR-102 progressing towards anticipated public hearing and filing early next year.

Citation of Rules Affected by this Order: New WAC 246-840-048; and repealing WAC 246-840-035.

Statutory Authority for Adoption: RCW 18.79.110.

Other Authority: HB 1721 (chapter 203, Laws of 2017) repealing RCW 18.79.380, 18.79.180, 18.79.200.

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 repeal of RCW 18.79.380 Licensed practical nurse/nontraditional registered nurse program—Obtaining required clinical experience, effective July 23, 2017, leaves a number of students currently enrolled in nontraditional nursing programs without an avenue to apply for licensure in Washington state after their graduation. Current national and state nursing education standards require faculty-directed clinical practice experiences at all levels of nursing education to develop both practical and clinical reasoning skills necessary for quality, safe patient care. No mechanism exists for these students to complete the required registered nurse practice experience in a safe, supervised manner. The commission establishes standards to ensure these students complete the required clinical practice experience. Ultimately, patient and public protection are most important. Supervision of students by qualified faculty members assures students receive quality learning experiences necessary to practice at a level to protect the public when the student obtains licensure as a registered nurse. This rule only impacts students currently enrolled in a nontraditional nursing program.

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

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

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

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

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

Date Adopted: November 6, 2018.

Paula R. Meyer, MSN, RN, FRE
Executive Director
Nursing Care Quality
Assurance Commission

NEW SECTION

WAC 246-840-048 Students enrolled in a nontraditional nursing program. This section applies to a licensed practical nurse (LPN) enrolled in a nontraditional LPN to registered nurse (RN) program on July 27, 2017, and describes the eligibility requirements for obtaining an interim permit.

(1) Graduates may apply for interim permits after degree confirmation by the nontraditional program.

(a) An LPN enrolled in a nontraditional nursing program on July 27, 2017, has until July 27, 2020, to complete the nontraditional program, as defined in WAC 246-840-010.

(b) An LPN successfully completing a nontraditional nursing program after July 27, 2020, must obtain licensure by endorsement by completing at least one thousand hours of practice as an RN and without discipline on the registered nurse license.

(2)(a) An LPN successfully completing the nontraditional nursing program and passing the National Council of State Boards of Nursing Registered Nurse Licensing Examination (NCLEX-RN®) may be eligible to receive an interim permit for the purpose of completing one thousand hours of clinical practice experience in the role of an RN.

(b) Only students licensed as an LPN in Washington state and identified by the nontraditional program on July 27, 2017, will be considered eligible to obtain initial licensure from the commission under this section.

(3) An LPN successfully completing a nontraditional nursing program as identified in subsection (2)(b) of this section must:

(a) Submit a completed RN application indicating the need for an interim permit with the required fee, as defined in WAC 246-840-990;

(b) Request an official transcript be sent directly to the commission from the nontraditional nursing education program confirming a conferred associate degree in nursing;

(c) Successfully pass the National Council of State Boards of Nursing Registered Nurse Licensing Examination (NCLEX-RN®);

(d) Complete one thousand hours of practice under an interim permit in the role of an RN; and

(e) Provide documented evidence from a commission approved supervising licensed RN documenting the interim permit holder successfully completed the one thousand hours of practice in an RN role.

(4) The supervising RN from the acute care, skilled nursing, or transitional care facility must:

(a) Submit a commission approved application;

(b) Have an active, unencumbered RN license;

(c) Attest to not being related to or personal friends of the interim permit holder;

(d) Have three years experience as an RN;

(e) Have demonstrated teaching and mentoring skills; and

(f) Be able to evaluate, with input from others, the practice of the interim permit holder in the role of an RN.

(5) The interim permit expires one year after the submission of the application and is not renewable.

(6) An interim permit holder who does not successfully fulfill the practice requirements, as identified in subsection (3)(c) and (d) of this section, does not meet the requirements for licensure by examination as an RN in the state of Washington.

(7) The holder of the interim permit is subject to chapter 18.130 RCW, Regulation of health professionals—Uniform Disciplinary Act.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-840-035 Initial licensure for registered nurses—
Out-of-state nontraditional nursing education program approved by another United States nursing board as defined by WAC 246-840-010(16).

WSR 18-22-132
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-318—Filed November 7, 2018, 11:33 a.m., effective November 12, 2018]

Effective Date of Rule: November 12, 2018.

Purpose: Puget Sound commercial sea urchin fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000G.

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

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

Reasons for this Finding: Harvestable surpluses [surplus] of red sea urchins exist in Districts 1, 2, 3 and 4 for commercial harvest. This emergency rule is needed to open these districts. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 7, 2018.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000H Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750,

effective November 12, 2018, 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 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, 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 fish for, take, or possess 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, marine fish/shellfish catch areas 21A, 21B, 22A, 22B, 23A in Sea Urchin District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochot 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 fish for, take, or possess green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landings for red sea urchin and green sea urchin for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and extends through Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 12, 2018:

WAC 220-340-75000G Commercial sea urchin fisheries.
(18-306)