

WSR 19-14-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-134—Filed June 19, 2019, 3:32 p.m., effective June 26, 2019]

Effective Date of Rule: June 26, 2019.

Purpose: Amend Puget Sound commercial shrimp fishery rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000C; and amending WAC 220-340-520.

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 2019 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the pot fishery season for spot shrimp in areas outlined above; (2) implements a spot shrimp biweekly limit for all areas; (3) implements a minimum mesh size restriction for spot shrimp gear; (4) opens the 1B-21A trawl fishery season; and (5) maintains the previous regulations and restrictions for the nonspot trawl and pot fisheries. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: June 19, 2019.

Craig C. Burley
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000D Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective 12:01 a.m., June 26, 2019 until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

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

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

(ii) All waters of Shrimp Management Areas 1B are closed to the harvest of all species of shrimp.

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

(iv) All waters of Shrimp Management Area 2E are closed to the harvest of spot shrimp.

(v) All waters of Shrimp Management Area 2W are closed to the harvest of spot shrimp.

(vi) All waters of 23A East in Shrimp Management Area 3 are closed to the harvest of spot shrimp.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per *weekly management period* from Shrimp Management Area 2W and 2E combined.

(c) Effective immediately, until further notice, the shrimp *weekly management period* is Wednesday through Tuesday.

(d) Effective immediately, until 11:59 p.m. July 2, 2019, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 400 pounds.

(e) Effective 12:01 a.m. July 3, 2019, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 1,200 pounds per *biweekly management period*, with the following exception: It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds *per biweekly management period* in Shrimp Management Area 1A.

(f) Effective 12:01 a.m. July 3, 2019, until further notice, the spot shrimp *biweekly management periods* are (1) July 3 through July 16; (2) July 17 through July 30; and (3) July 31 through August 13.

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

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

(2) Shrimp trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open.

(d) That portion of Catch Area 21A within SMA 1B is open effective 6:00 a.m. July 1, 2019, until further notice.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m., June 26, 2019:

WAC 220-340-52000C Puget Sound shrimp pot and beam trawl fishery—Season. (19-121)

WSR 19-14-007
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 20, 2019, 11:55 a.m., effective June 20, 2019, 11:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Districts received a one-time legislative salary and benefit increase included in the transportation operations allocation for the 2018-19 school year to reflect the compensation increase with the passage of E2SSB 6362 (2018). Districts will likely not have time to utilize the increase in funds in the current school year and will therefore face recovery of transportation funds not expended. A new subsection to WAC 392-141-410 will allow a one-year-only carryover of unspent funds for the 2019-20 school year to prevent the recovery of 2018-19 allocation.

Citation of Rules Affected by this Order: Amending WAC 392-141-410.

Statutory Authority for Adoption: RCW 28A.150.290.

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: Immediate adoption of this rule is necessary to preserve general welfare. If this one-year-only amendment to WAC 392-141-410 does not go into effect before the beginning of the next school year, school districts will likely be subject to the recovery of unexpended transportation funds that districts received to reflect compensation increases under E2SSB 6362. The office of superintendent of public instruction filed a preproposal statement of inquiry, WSR 19-11-112, on May 21, 2019, indicating the agency's intent to initiate rule making to adopt this amendment in a permanent rule.

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

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

Number of Sections Adopted at 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 1, Repealed 0.

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

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

Date Adopted: June 20, 2019.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-17-110, filed 8/21/13, effective 9/21/13)

WAC 392-141-410 Recovery of transportation funds.

The superintendent of public instruction shall recover (take back) state pupil transportation allocations that are not expended for the allowable student transportation program costs under the accounting guidance provided by the superintendent. The amount of the recovery shall be calculated as follows:

(1) Determine the district's state allocation for student transportation operations for the school year.

(2) Determine the district's allowable student transportation costs as follows:

(a) Sum the following amounts:

(i) The district's direct expenditures for general fund program 99 pupil transportation, and for educational service district student transportation operations expenditures in program 70 transportation excluding expenditures associated with the regional coordinator and bus driver training grants;

(ii) Allowable indirect charges equal to the expenditures as calculated pursuant to (a)(i) of this subsection times the state recovery rate as calculated in the district annual financial report;

(b) Subtract the district's revenues for the school year for revenue account 7199 (transportation revenues from other districts).

(3) If the allowable program costs are less than the state allocation, OSPI shall recover the difference.

(4) Special rule for the 2019-20 school year only. School districts may carry over state pupil transportation allocations that were not expended for allowable student transportation program costs from the 2018-19 school year to the 2019-20 school year.

Funds transferred into the transportation vehicle fund shall not be included as allowable transportation program costs for recovery calculations.

WSR 19-14-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-133—Filed June 20, 2019, 12:00 p.m., effective June 22, 2019]

Effective Date of Rule: June 22, 2019.

Purpose: Amend recreational fishing rules for Drano Lake and Wind River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000T; and amending WAC 220-312-030.

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 open salmon and steelhead seasons in Drano Lake and Wind River. The Washington department of fish and wildlife closed Drano Lake and Wind River to salmon and steelhead angling in mid-May to ensure hatchery broodstock goals were met. Based on updated expected returns to these hatcheries, it is likely that broodstock needs will be achieved at these facilities. 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: June 20, 2019.

Craig C. Burley
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000V Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective June 22, 2019 until further notice:

- (1) **Cispus River (Lewis Co.):** Salmon: closed.
- (2) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Salmon: closed.
- (3) **Cowlitz River (Cowlitz Co.):** Salmon: closed.

(4) Kalama River (Cowlitz Co.):

(a) From the mouth upstream to 1000 feet below the fishway at the upper salmon hatchery:

(i) Salmon and steelhead: The use of barbed hooks is permissible.

(ii) Salmon; effective immediately: Daily limit 6; no more than 1 adult may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

(b) From 1000 feet above fishway at upper salmon hatchery to Summers Creek: Selective Gear Rules, except the use of barbed hooks is permissible.

(c) From Summers Creek to the intersection 6000 and 6420 Roads: fly fishing only, except the use of barbed hooks is permissible.

(d) From the intersection 6000 and 6420 Roads to 6600 Road Bridge immediately downstream of Jacks Creek: Selective Gear Rules, except the use of barbed hooks is permissible.

(5) Klickitat River (Klickitat Co.):

(a) From the mouth (Burlington Northern Railroad bridge) to boundary markers below Klickitat Salmon Hatchery, effective immediately until further notice: Salmon: closed.

(6) **Lewis River (Clark/Cowlitz Co.):** Salmon: closed.

(7) **Wind River (Skamania Co.):** From the mouth to 800 yards downstream of Carson National Fish Hatchery: Salmon and steelhead: June 22 through June 30, 2019: Daily limit 6. Up to 2 adults may be retained of which no more than 1 may be a salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 22, 2019:

WAC 220-312-03000T Southwest—Freshwater exceptions to statewide rules. (19-114)

WSR 19-14-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-135—Filed June 21, 2019, 1:24 p.m., effective June 21, 2019, 1:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational halibut rules.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000U; and amending WAC 220-314-030.

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: There is sufficient quota to open recreational halibut fishing for an additional all depth

fishing day in Marine Area 2 (Westport). Opening another day will provide recreational anglers additional opportunity to catch the remaining sport quota. This rule conforms to federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: June 21, 2019.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000V Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

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

(2) **Catch Record Card Area 1 (Nearshore fishery);**

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 124°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

(a) Open seven days per week.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2:** Open Saturday June 29, 2019.

(4) **Card Areas 3 and 4:**

(a) Open Saturday, June 22; Thursday, June 27; Saturday, June 29, 2019.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line); it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(5) **Catch Record Card Area 5 through 10:**

(a) Open Saturday, June 22; Thursday June 27; and Saturday, June 29, 2019.

(b) It is permissible for halibut anglers to retain Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Area 5.

(6) **Catch Record Card Areas 11, 12 and 13:** Closed.

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) It is unlawful to land halibut in a port within an area closed to halibut fishing.

(9) Annual halibut limit is four.

(10) All other permanent rules remain in effect.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000U Halibut—Seasons—Daily and possession limits. (19-128)

WSR 19-14-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-136—Filed June 21, 2019, 1:33 p.m., effective June 21, 2019, 1:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Skagit River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000T; 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: This emergency rule is needed to close a portion of the Skagit River to all fishing to avoid gear conflicts with treaty fisheries on those scheduled dates. 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: June 21, 2019.

Nate Pamplin
 for Kelly Susewind
 Director

NEW SECTION

WAC 220-312-04000T Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040:

Skagit River: From the mouth to the Baker River - Closed to all fishing the dates of June 27 and June 28, 2019, and July 1 and 2, 2019.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 3, 2019:

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

WSR 19-14-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-138—Filed June 24, 2019, 2:14 p.m., effective June 24, 2019, 2:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Commercial coastal troll rules—Seasons and areas.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000Q and 220-354-30000R; and amending WAC 220-354-300.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. Sufficient [Sufficient] quota remains in Coast[al] Salmon Management and Catch Reporting Areas 3 and 4 to reopen fishing through June 28 with a landing and possession limit of twenty Chinook salmon. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and are being simultaneously adopted for federal waters by the National Oceanic and Atmospheric Administration. 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: June 24, 2019.

Amy H. Windrope
 for Kelly Susewind
 Director

NEW SECTION

WAC 220-354-30000R Coastal salmon troll seasons—Commercial. Notwithstanding the provisions of WAC 220-354-300, effective immediately until further

notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open: Immediately through June 28, 2019.

(2) In Washington Catch Reporting Area 1 landing and possession limit of 50 Chinook per vessel per landing week, defined as Thursday through Wednesday.

(3) In Washington Catch Reporting Areas 3 and 4, landing and possession limit of 20 Chinook per vessel for the open period June 24 through June 28.

(4) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

(5) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

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

(7) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels fishing, or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll license. For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook and halibut catch aboard, and destination with approximate time of delivery. Vessels may not land fish east of the Sekiu River or east of the Megler-Astoria bridge. During any single trip, only one side of the Leadbetter Point line may be fished. Vessels fishing or in possession of salmon south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

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

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

Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-354-30000Q Coastal salmon troll seasons—
Commercial. (19-126)

The following section of the Washington Administrative Code is repealed effective June 29, 2019:

WAC 220-354-30000R Coastal salmon troll seasons—
Commercial

**WSR 19-14-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-137—Filed June 24, 2019, 2:29 p.m., effective June 24, 2019,
2:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational halibut rules.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000V; and amending WAC 220-314-030.

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: There is sufficient quota to open recreational halibut fishing for an additional all depth fishing day in Catch Record Card Areas 1 through 10. Opening another day will provide recreational anglers additional opportunity to catch the remaining sport quota. This rule conforms to federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: June 24, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000W Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

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

(a) Open Friday June 28.

(b) It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish, Pacific Cod, or flat fish species when halibut are on board.

(c) Lingcod can be retained when halibut are on board, during the halibut season north of the Washington-Oregon border.

(2) **Catch Record Card Area 1 (Nearshore fishery);**

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

(a) Open seven days per week.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2:** Open Friday, June 28 and Saturday, June 29, 2019.

(4) **Card Areas 3 and 4:**

(a) Open Thursday, June 27; Friday, June 28; and Saturday, June 29, 2019.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line); it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
48°23.6'N. lat., 124°44.9'W. long.
48°18.6'N. lat., 124°43.6'W. long.
48°18.6'N. lat., 124°48.2'W. long.
48°10.0'N. lat., 124°48.8'W. long.
48°02.4'N. lat., 124°49.3'W. long.
47°37.6'N. lat., 124°34.3'W. long.
47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(5) **Catch Record Card Area 5 through 10:**

(a) Open Thursday June 27; Friday, June 28; and Saturday, June 29, 2019.

(b) It is permissible for halibut anglers to retain Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Area 5.

(6) **Catch Record Card Areas 11, 12 and 13:** Closed.

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) It is unlawful to land halibut in a port within an area closed to halibut fishing.

(9) Annual halibut limit is four.

(10) All other permanent rules remain in effect.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000V Halibut—Seasons—Daily and possession limits. (19-135)

**WSR 19-14-026
EMERGENCY RULES
OFFICE OF**

FINANCIAL MANAGEMENT

[Filed June 24, 2019, 6:28 p.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: ESHB 1109 is the state operating budget for fiscal years 2019 - 2021. ESHB 1109 provides a premium pay for those employees who are assigned to work on McNeil Island at the Special Commitment Center, which is funded in section 207. Additionally ESHB 1109, section 950 provides that funding is provided in the operating budget for a five percent premium pay for employees working in King County. (ESHB 1109 is also referred to as chapter 415, Laws of 2019.)

Citation of Rules Affected by this Order: New WAC 357-28-203 and 357-58-141.

Statutory Authority for Adoption: Chapter 415, Laws of 2019.

Other Authority: RCW 41.06.133.

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: To align Title 357 WAC with the changes made in chapter 415, Laws of 2019.

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 2, 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 2, Amended 0, Repealed 0.

Date Adopted: June 24, 2019.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

NEW SECTION

WAC 357-28-203 When must an employee receive premium pay? Premium pay at the rate specified in the compensation plan must be paid when an employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; and

(2) Assigned to a permanent duty station in King County.

(a) This subsection does not apply to employees at the University of Washington.

(b) When an employee is no longer permanently assigned to a King County duty station they will not be eligible for this premium pay.

NEW SECTION

WAC 357-58-141 When must an employee receive premium pay? Premium pay at the rate specified in the compensation plan must be paid when an employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; and

(2) Assigned to a permanent duty station in King County.

(a) This subsection does not apply to employees at the University of Washington.

(b) When an employee is no longer permanently assigned to a King County duty station they will not be eligible for this premium pay.

**WSR 19-14-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-142—Filed June 27, 2019, 7:52 a.m., effective June 27, 2019,
7:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The proposal will amend existing rules affected by the passage of SB [ESSB] 5148 during the 2019 legislative session, allowing hunters to wear hunter orange and/or hunter pink when required.

Citation of Rules Affected by this Order: Amending WAC 220-414-080, 220-415-030 2019, 220-415-050 2018-2020, and 220-415-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, and 77.04.055.

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: For the purpose of hunter safety, the commission has adopted rules determining the

times and manner when a person hunting must wear fluorescent hunter orange clothing. This proposal will add the color fluorescent pink. A person hunting must wear either fluorescent orange or fluorescent pink clothing, or both, in order to meet a visible clothing requirement when hunting.

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 4, 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 0, Repealed 0.

Date Adopted: June 27, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-414-08000A Hunting—Hunter orange and hunter pink clothing requirements. (1) It is unlawful to hunt upland birds or rabbits with a firearm, other than a muzzleloading firearm, during any upland game bird season unless the hunter is wearing fluorescent hunter orange and/or fluorescent hunter pink clothing.

(2) It is unlawful to hunt big game, except bear and cougar, with modern firearm equipment at any time in any manner unless the hunter is wearing fluorescent hunter orange and/or fluorescent hunter pink clothing.

(3) It is unlawful to hunt wildlife, except migratory birds, during those times and in those places open to taking of deer

[NEW SECTION]

WAC 220-415-05000A 2018-2020 Elk general seasons and definitions.

Hunting Method: May use modern firearm, bow and arrow, crossbow, or muzzleloader, but only during modern firearm seasons.

Hunt Area	Elk Tag Area	Game Management Units (GMUs)	2018 Dates	2019 Dates	2020 Dates	Legal Elk
Eastern Washington	EF	101, 105, 108, 111, 113, 117, 121, 204	Oct. 27 - Nov. 4	Oct. 26 - Nov. 3	Oct. 31 - Nov. 8	Any bull
		145 through 154, 162 through 169, 172 (except Elk Area 1040), 175 through 186, 249, 336 through 368	Oct. 27 - Nov. 4	Oct. 26 - Nov. 3	Oct. 31 - Nov. 8	Spike bull
		251, 328, 329, 334, 335	Oct. 27 - Nov. 4	Oct. 26 - Nov. 3	Oct. 31 - Nov. 8	True spike bull

or elk during nonmaster hunter, modern firearm general seasons, unless the hunter is wearing fluorescent hunter orange and/or fluorescent hunter pink clothing.

(4) Wearing fluorescent hunter clothing means: A minimum of 400 square inches of fluorescent hunter orange and/or fluorescent hunter pink exterior clothing, worn above the waist and visible from all sides. A combination of both colors may be worn to meet the 400 square inches.

[NEW SECTION]

WAC 220-415-03000B 2019 Deer special permits.

Hunter Education Instructor Incentive Permits
- Special deer permits will be allocated through a random drawing to those hunter education instructors who qualify.
- Permit hunters must use archery equipment during archery seasons, muzzleloader equipment or archery equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons. Hunter orange and/or hunter pink is required during modern firearm seasons.
- Except for online class incentive permits and chief instructor incentive permits, qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing.
- Permittees may purchase a second license for use with the permit hunt only.
Qualified hunter education instructors may only receive one incentive permit each year.

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

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

Hunt Area	Elk Tag Area	Game Management Units (GMUs)	2018 Dates	2019 Dates	2020 Dates	Legal Elk
		Elk Area 3722*	Sept. 8-23	Sept. 7-22	Sept. 12-27	Antlerless only
		124 through 142, 372, 382, 388	Oct. 27 - Nov. 4	Oct. 26 - Nov. 3	Oct. 31 - Nov. 8	Any elk
		203, 209 through 248, 250, 254 through 290, 373, 379, 381	Oct. 27 - Nov. 15	Oct. 26 - Nov. 15	Oct. 31 - Nov. 15	Any elk
		Master Hunters Only: 371, Elk Areas 3911 and 3912. Must wear hunter orange and/or hunter pink.	Aug. 1 - Jan. 20, 2019	Aug. 1 - Jan. 20, 2020	Aug. 1 - Jan. 20, 2021	Antlerless only
Late Archery General Elk Seasons						
Eastern Washington	EA	101, 105, 108, 117, 121, 204	Nov. 25 - Dec. 8	Nov. 25 - Dec. 8	Nov. 25 - Dec. 8	Any bull
		124, 127, 373, 388	Nov. 25 - Dec. 8	Nov. 25 - Dec. 8	Nov. 25 - Dec. 8	Any elk
		178	Nov. 20 - Dec. 8	Nov. 20 - Dec. 8	Nov. 20 - Dec. 8	Antlerless only
		Elk Area 1010, 163	Dec. 9 - Jan. 30, 2019	Dec. 9 - Jan. 30, 2020	Dec. 9 - Jan. 30, 2021	Antlerless only
		203, 209 through 248, 250, 254 through 290, 379, 381. Must wear hunter orange and/or hunter pink..	Oct. 27 - Nov. 15	Oct. 26 - Nov. 15	Oct. 31 - Nov. 15	Any elk
		Master Hunters Only: 371, Elk Areas 3911 and 3912. Must wear hunter orange and/or hunter pink..	Aug. 1 - Jan. 20, 2019	Aug. 1 - Jan. 20, 2020	Aug. 1 - Jan. 20, 2021	Antlerless only
		Master Hunters Only: 127, 130	Dec. 9-31	Dec. 9-31	Dec. 9-31	Antlerless only
		328, 334, 335	Nov. 21 - Dec. 8	Nov. 27 - Dec. 8	Nov. 25 - Dec. 8	True spike bull or antlerless
		336, 342, 346, 352, 364, Elk Area 3681	Nov. 21 - Dec. 8	Nov. 27 - Dec. 8	Nov. 25 - Dec. 8	Spike bull or antlerless
Late Muzzleloader General Elk Seasons						
Eastern Washington	EM	130 through 142	Nov. 25 - Dec. 8	Nov. 25 - Dec. 8	Nov. 25 - Dec. 8	Any elk
		203, 209 through 248, 250, 254 through 290, 373, 379, 381. Must wear hunter orange and/or hunter pink.	Oct. 27 - Nov. 15	Oct. 26 - Nov. 15	Oct. 31 - Nov. 15	Any elk
		Master Hunters Only: 371, Elk Areas 3911 and 3912. Must wear hunter orange and/or hunter pink.	Aug. 1 - Jan. 20, 2019	Aug. 1 - Jan. 20, 2020	Aug. 1 - Jan. 20, 2021	Antlerless only

Hunt Area	Elk Tag Area	Game Management Units (GMUs)	2018 Dates	2019 Dates	2020 Dates	Legal Elk
		Master Hunters Only: 127, 130	Dec. 9-31	Dec. 9-31	Dec. 9-31	Antlerless only

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

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

[NEW SECTION]

WAC 220-415-06000A 2019 Elk special permits.

Hunter Education Instructor Incentive Permits
<ul style="list-style-type: none"> - Special elk permits will be allocated through a random drawing to those hunter education instructors who qualify. - Permit hunters must use archery equipment during archery seasons, muzzleloader equipment or archery equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons. Hunter orange and/or hunter pink is required during modern firearm seasons.

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

**WSR 19-14-046
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed June 27, 2019, 10:28 a.m., effective June 27, 2019, 10:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: RCW 28A.300.285 provides that the office of superintendent of public instruction (OSPI) must adopt rules regarding school districts' communication of a model harassment, intimidation, and bullying (HIB) policy and procedure to parents, students, employees, and volunteers. Those rules were formerly codified at WAC 392-400-226. As a part of housekeeping changes made to chapter 392-400 WAC in 2019, WAC 392-400-226 has been repealed effective July 1, 2019. The purpose of this emergency rule is to temporarily recodify WAC 392-400-226 into a new, permanent stand-alone chapter of the Washington Administrative Code, chapter 392-405 WAC, while expedited rule making is underway that would make the rule change permanent. There are no material changes to the former rule.

Citation of Rules Affected by this Order: New chapter 392-405 WAC.

Statutory Authority for Adoption: [RCW 28A.300.285.]

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: Former WAC 392-400-226 directed school districts regarding how to communicate Washington state's model HIB rules to parents, students, employees, and volunteers as required under RCW 28A.300.-285. As a part of housekeeping changes made to chapter 392-400 WAC in 2019, WAC 392-400-226 was repealed effective July 1, 2019. OSPI is simultaneously undertaking expedited rule making to recodify WAC 392-400-226 as a new, permanent stand-alone chapter of the Washington Administrative Code, chapter 392-405 WAC. The immediate adoption of this emergency rule is necessary to ensure that the notice requirements of RCW 28A.300.285 are in place at the start of the 2019-20 school year while the expedited rule making is underway.

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 3, 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: June 26, 2019.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-405 WAC

HARASSMENT, INTIMIDATION AND BULLYING

NEW SECTION

WAC 392-405-005 Authority. The authority for this chapter is RCW 28A.300.285, which provides that the superintendent of public instruction shall adopt rules regarding school districts' communication of a model harassment, intimidation, and bullying policy and procedure to parents, students, employees, and volunteers.

NEW SECTION

WAC 392-405-010 Purpose. The purpose of this chapter is to establish the requirements school districts must meet when communicating the district's harassment, intimidation, and bullying policy and procedure to parents, students, employees, and volunteers.

NEW SECTION

WAC 392-405-020 School district rules defining harassment, intimidation and bullying prevention policies and procedures—Distribution of rules. (1) A school district's harassment, intimidation and bullying policy and procedure must be published and made available to all parents or guardians, students, employees, and volunteers on an annual basis.

(2) A school district must publish, at a minimum, the following materials:

- (a) The district's policy and procedure;
- (b) A harassment, intimidation, and bullying incident reporting form; and
- (c) Current contact information for the district's harassment, intimidation and bullying compliance officer.

(3) If a school district does not distribute the policy and procedure to all parents or guardians, students, employees, and volunteers, the district must provide notice that describes the contents of the policy and procedure and specifies the person(s) to contact for a copy. The notice must be provided to students and parents on an annual basis in a manner reasonably calculated to come to their attention.

**WSR 19-14-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-143—Filed June 27, 2019, 1:20 p.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: Amend coastal salmon troll rules.

Citation of Rules Affected by this Order: Amending WAC 220-354-300.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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: June 27, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-30000S Coastal salmon troll seasons—Commercial. Notwithstanding the provisions of WAC 220-354-300, effective July 1 until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open: July 1 through September 30, 2019.

(2) Landing and possession limit of 150 coho per vessel per landing week, defined as Thursday through Wednesday.

(3) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed. The Grays Harbor Control Zone is closed beginning August 12.

(4) All retained coho must be marked with a healed adipose fin clip.

(5) No chum retention north of Cape Alava, WA in August and September.

(6) Minimum size for Chinook salmon is 28 inches in length. Minimum size for coho salmon is 16 inches in length. No minimum size for pink, sockeye or chum salmon.

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

(8) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov with Area fished, total Chinook, coho, and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov with Area fished, total Chinook, coho, and halibut catch aboard, and destination. Vessels fishing, or in pos-

session of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll license. For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery. Vessels may not land fish east of the Sekiu River or east of the Megler-Astoria bridge. During any single trip, only one side of the Leadbetter Point line may be fished. Vessels fishing or in possession of salmon south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

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

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

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

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

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

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

WSR 19-14-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-147—Filed June 27, 2019, 4:52 p.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: Amend recreational salmon fishing rules for the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000P; and amending WAC 220-312-060.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the state's share of the fishing plans agreed to with resource comanagers at the 2019 North of Falcon proceedings. These emergency rules are necessary to meet conservation objectives and because the current permanent rule is inconsistent with the agreed 2019 North of Falcon fishery sharing package. Specifically, the rule closes sections of the Columbia River upstream of Priest Rapids Dam beginning July 1, 2019, and carries forward Columbia River summer salmon fisheries from previous 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: June 27, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) From Buoy 10 upstream to Megler-Astoria Bridge; salmon and steelhead open August 1 through August 20:

- (a) Night closure.
- (b) Daily limit 2.
- (c) No more than 1 Chinook may be retained.
- (d) Release all salmon and steelhead except Chinook and hatchery coho.

(2) From Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon Bank; salmon and steelhead:

- (a) Open June 16 through June 30:
 - (i) Daily limit 2.
 - (ii) Release all salmon and wild steelhead.
- (b) Open July 1 through July 31:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and wild steelhead.
- (c) Open August 1 through August 20:

- (i) Night closure.
- (ii) Daily limit 2.
- (iii) No more than 1 Chinook may be retained.
- (iv) Release all salmon and steelhead except Chinook and hatchery coho.

(3) From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon Bank to Hood River Bridge; salmon and steelhead:

- (a) Open June 16 through June 30:
 - (i) Daily limit 2.
 - (ii) Release all salmon and wild steelhead.
- (b) Open July 1 through July 31:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and wild steelhead.
- (c) Open August 1 through August 20:

- (i) Night closure.
- (ii) Daily limit 1.
- (iii) Release all salmon and steelhead except Chinook and hatchery coho.

(4) From Hood River Bridge to John Day Dam:

- (a) Open June 16 through June 30:
 - (i) Daily limit 2.
 - (ii) Release all salmon and wild steelhead.
- (b) Open July 1 through July 31:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and wild steelhead.
- (c) Salmon and steelhead open August 1 through August 20:

- (i) Night closure.
- (ii) Daily limit 1.
- (iii) Release all salmon and steelhead except Chinook and coho.

(5) From John Day Dam upstream to Hwy 395 at Pasco, WA:

- (a) Open June 16 through June 30:
 - (i) Daily limit 2.
 - (ii) Release all salmon and wild steelhead.

(b) Open July 1 through July 31:

- (i) Night closure.
- (ii) Daily limit 1.
- (iii) Release all salmon and wild steelhead.
- (c) Salmon and steelhead open August 1 through August 20:

- (i) Night closure.
- (ii) Daily limit 1.
- (iii) Release all salmon and wild steelhead except Chinook and coho.

(6) From Hwy 395 Bridge at Pasco, WA upstream to Priest Rapids Dam: Salmon and steelhead closed June 16 through August 15.

(7) From Priest Rapids Dam upstream: Salmon closed July 1 through August 31.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2019:

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia (19-105)

WSR 19-14-053 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-145—Filed June 28, 2019, 7:33 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: To prevent new and multiple wildfires during this period of high fire danger; and to prevent the severe deterioration of air quality, which exacerbates the risk to life, health, and property.

Citation of Rules Affected by this Order: Amending WAC 220-500-030, 220-500-040, 220-500-110, and 220-500-140.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, and 77.04.055.

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: Addresses an emergency need to prevent new and multiple wildfires during this period of high fire danger; and reduces the risk to life, health, and property.

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 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, 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: June 28, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-500-03000B Behavior and conduct. (1) Notwithstanding the provisions of WAC 220-500-030, effective July 1, 2019, until further notice, in wildlife areas and access sites in eastern Washington owned or controlled by the department, it is unlawful to:

(a) Operate a chainsaw without a permit or approval from the director; or

(b) Weld or operate an acetylene torch or other open flame without a permit or approval from the director.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 220-500-04000B Regulating public access. (1) Notwithstanding the provisions of WAC 220-500-040, effective July 1, 2019, until further notice, it is unlawful to operate a motor vehicle off developed roadways in wildlife areas and access sites owned or controlled by the department in eastern Washington. However, it is permissible to park in an area devoid of vegetation within 10 feet of the roadway, and to park overnight in developed campgrounds and at trailheads.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 220-500-11000B Fires and campfires. (1) Notwithstanding the provisions of WAC 220-500-110, effective July 1, 2019, until further notice, it is unlawful to build, start, or maintain fires or campfires in wildlife areas and access sites owned or controlled by the department in eastern Washington without a permit or approval from the director. However, it is permissible to use personal camp stoves or lanterns fueled by liquid petroleum, liquid petroleum gas, or propane.

(2) Effective immediately until further notice, it is unlawful to smoke in wildlife areas and access sites owned or controlled by the department in eastern Washington, except in an enclosed vehicle.

(3) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 220-500-14000B Firearms and target practicing. (1) Notwithstanding the provisions of WAC 220-500-140, effective July 1, 2019, until further notice, it is unlawful

to discharge firearms on department owned or controlled lands unless engaged in lawful hunting.

(2) Unless otherwise provided, violation of any of the provisions of this section constitutes an infraction, pursuant to RCW 77.15.020 and 77.15.160.

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

WSR 19-14-054

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 28, 2019, 8:21 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: The agency is striking all references to dental managed care from these sections. Eligible clients will continue to receive their dental services through fee-for-service.

Citation of Rules Affected by this Order: Amending WAC 182-535-1050, 182-535-1060, 182-535-1245, 182-535A-0010, and 182-535A-0020.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1109, section 211(52), 2019 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: Recently signed ESHB 1109 directs the agency to not proceed with a managed care dental option, effective July 1, 2019. The agency previously revised these sections in anticipation of having a managed care dental option, effective July 1, 2019, to comply with SSB 5883 (Laws of 2017). This rule making strikes the dental managed care option.

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 0.

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

Date Adopted: June 28, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535-1050 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter. The medicaid agency also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT) and the American Medical Association's Physician's Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT or CPT and this section, this section prevails. (CPT is a trademark of the American Medical Association.)

"Access to baby and child dentistry (ABCD)" is a program to increase access to dental services for medicaid eligible infants, toddlers, and preschoolers through age five. See WAC 182-535-1245 for specific information.

"Alternate living facility" is defined in WAC 182-513-1100.

"American Dental Association (ADA)" is a national organization for dental professionals and dental societies.

"Anterior" refers to teeth (maxillary and mandibular incisors and canines) and tissue in the front of the mouth. Permanent maxillary anterior teeth include teeth six, seven, eight, nine, ten, and eleven. Permanent mandibular anterior teeth include teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven. Primary maxillary anterior teeth include teeth C, D, E, F, G, and H. Primary mandibular anterior teeth include teeth M, N, O, P, Q, and R.

"Asynchronous" means two or more events not happening at the same time.

"Behavior management" means using one additional professional staff, who is employed by the dental provider or clinic and who is not delivering dental treatment to the client, to manage the client's behavior to facilitate dental treatment delivery.

"By-report" means a method of reimbursement in which the department determines the amount it will pay for a service when the rate for that service is not included in the agency's published fee schedules. Upon request the provider must submit a "report" that describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"Caries" means carious lesions or tooth decay through the enamel or decay on the root surface.

- **"Incipient caries"** means the beginning stages of caries or decay, or subsurface demineralization.

- **"Rampant caries"** means a sudden onset of widespread caries that affects most of the teeth and penetrates quickly to the dental pulp.

"Comprehensive oral evaluation" means a thorough evaluation and documentation of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

"Conscious sedation" means a drug-induced depression of consciousness during which a client responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is maintained.

"Core buildup" means the building up of clinical crowns, including pins.

"Coronal" means the portion of a tooth that is covered by enamel.

"Crown" means a restoration covering or replacing the whole clinical crown of a tooth.

"Current dental terminology (CDT)" means a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

"Current procedural terminology (CPT)" means a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Decay" means a term for caries or carious lesions and means decomposition of tooth structure.

"Deep sedation" means a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

"Dental general anesthesia" see **"general anesthesia."**

"Dentures" means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

"Denturist" means a person licensed under chapter 18.30 RCW to make, construct, alter, reproduce, or repair a denture.

"Distant site (location of dental provider)" means the physical location of the dentist or authorized dental provider providing the dental service to a client through teledentistry.

"Edentulous" means lacking teeth.

"Endodontic" means the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

"EPSDT" means the agency's early and periodic screening, diagnostic, and treatment program for clients age twenty and younger as described in chapter 182-534 WAC.

"Extraction" see **"simple extraction"** and **"surgical extraction."**

"Flowable composite" means a diluted low-viscosity-filled resin-based composite dental restorative material that is used in cervical restorations and small, low stress bearing occlusal restorations.

"Fluoride varnish, rinse, foam or gel" means a substance containing dental fluoride which is applied to teeth, not including silver diamine fluoride.

"General anesthesia" means a drug-induced loss of consciousness during which a client is not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Interim therapeutic restoration (ITR)" means the placement of an adhesive restorative material following caries debridement by hand or other method for the management of early childhood caries. It is not considered a definitive restoration.

"Limited oral evaluation" means an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

"Limited visual oral assessment" means an assessment by a dentist or dental hygienist provided in a setting other than a dental office or dental clinic to identify signs of disease and the potential need for referral for diagnosis.

"Medically necessary" see WAC 182-500-0070.

"Oral evaluation" see **"comprehensive oral evaluation."**

"Oral hygiene instruction" means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

"Originating site (location of client)" means the physical location of the medicaid client as it relates to teledentistry.

"Partials" or **"partial dentures"** mean a removable prosthetic appliance that replaces missing teeth on either arch.

"Periodic oral evaluation" means an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation.

"Periodontal maintenance" means a procedure performed for clients who have previously been treated for periodontal disease with surgical or nonsurgical treatment. It includes the removal of supragingival and subgingival microorganisms, calculus, and deposits with hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

"Periodontal scaling and root planing" means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

"Posterior" means the teeth (maxillary and mandibular premolars and molars) and tissue towards the back of the mouth. Permanent maxillary posterior teeth include teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen. Permanent mandibular posterior teeth include teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two. Primary maxillary posterior teeth include teeth A, B, I, and J. Primary mandibular posterior teeth include teeth K, L, S, and T.

~~(**"Prepaid ambulatory health plan (PAHP)"** see WAC 182-538-050. For the purpose of this chapter, dental managed care contractors are considered PAHPs.)~~

"Prophylaxis" means the dental procedure of scaling and polishing which includes removal of calculus, plaque, and stains from teeth.

"Proximal" means the surface of the tooth near or next to the adjacent tooth.

"Radiograph (X-ray)" means an image or picture produced on a radiation sensitive film emulsion or digital sensor by exposure to ionizing radiation.

"Reline" means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

"Root canal" means the chamber within the root of the tooth that contains the pulp.

"Root canal therapy" means the treatment of the pulp and associated periradicular conditions.

"Root planing" means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation.

"Scaling" means a procedure to remove plaque, calculus, and stain deposits from tooth surfaces.

"Sealant" means a dental material applied to teeth to prevent dental caries.

"Simple extraction" means the extraction of an erupted or exposed tooth to include the removal of tooth structure, minor smoothing of socket bone, and closure, as necessary.

"Standard of care" means what reasonable and prudent practitioners would do in the same or similar circumstances.

"Surgical extraction" means the extraction of an erupted or impacted tooth requiring removal of bone and/or sectioning of the tooth, and including elevation of mucoperiosteal flap if indicated. This includes related cutting of gingiva and bone, removal of tooth structure, minor smoothing of socket bone, and closure.

"Synchronous" means existing or occurring at the same time.

"Teledentistry" means the variety of technologies and tactics used to deliver HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) or store-and-forward technology to deliver covered services within the dental care provider's scope of practice to a client at a site other than the site where the provider is located.

"Temporomandibular joint dysfunction (TMJ/TMD)" means an abnormal functioning of the temporomandibular joint or other areas secondary to the dysfunction.

"Therapeutic pulpotomy" means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

"Usual and customary" means the fee that the provider usually charges nonmedicaid customers for the same service or item. This is the maximum amount that the provider may bill the agency.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535-1060 Client eligibility. (1) Refer to WAC 182-501-0060 to see which apple health programs include dental-related services in their benefit package.

(2) ~~((Clients whose benefit package includes dental services are assigned a dental managed care plan. If a client is not eligible for a dental managed care plan, they receive services on a fee-for-service basis.~~

~~(3) Clients enrolled in an agency contracted managed care organization (MCO) or prepaid ambulatory health plan (PAHP) must receive their dental services through that MCO or PAHP, except as described under WAC 182-538-095.~~

~~(a) All clients are eligible for dental managed care benefits with the exception of clients receiving apple health benefits under a state-only program.~~

~~(b) Clients eligible for dental managed care on a voluntary basis include:~~

~~(i) American Indian/Alaska native (AI/AN) clients; and~~

~~(ii) Clients who reside in a county that has only one MCO or PAHP.~~

~~(c) See WAC 182-538-060 for more details regarding managed care choice and assignment.~~

~~(4)) Managed care clients are eligible under apple health fee-for-service for covered dental-related services not covered by their managed care organization (MCO), subject to the provisions of this chapter and other applicable agency rules.~~

~~(3) See WAC 182-507-0115 for rules for clients eligible under the alien emergency medical program.~~

~~((5)) (4) Exception to rule procedures as described in WAC 182-501-0160 are not available for services that are excluded from a client's benefit package.~~

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535-1245 Access to baby and child dentistry (ABCD) program. The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services for medicaid-eligible clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.

(b) Clients eligible under one of the following medical assistance programs are eligible for the ABCD program:

(i) Categorically needy program (CNP);

(ii) Limited casualty program-medically needy program (LCP-MNP);

(iii) Children's health program; ~~((#))~~

(iv) State children's health insurance program (SCHIP);

or

(c) ABCD program services for eligible clients enrolled in a managed care organization (MCO) plan are paid through the fee-for-service payment system.

(2) Health care providers and community service programs identify and refer eligible clients to the ABCD program. If enrolled, the client and an adult family member may receive:

(a) Oral health education;

(b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and

(c) Assistance with transportation, interpreter services, and other issues related to dental services.

(3) Only ABCD-certified dentists and other agency-approved certified providers are paid an enhanced fee for furnishing ABCD program services. ABCD program services include, when appropriate:

(a) Family oral health education. An oral health education visit:

(i) Is limited to one visit per day per family, up to two visits per child in a twelve-month period, per provider or clinic; and

(ii) Must include documentation of all of the following in the client's record:

(A) "Lift the lip" training;

(B) Oral hygiene training;

(C) Risk assessment for early childhood caries;

(D) Dietary counseling;

(E) Discussion of fluoride supplements; and

(F) Documentation in the client's record to record the activities provided and duration of the oral education visit.

(b) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;

(c) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;

(d) Topical application of fluoride varnish;

(e) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in the agency's current published documents;

(f) Interim therapeutic restorations (ITRs) for primary teeth, only for clients age five and younger. The agency pays an enhanced rate for these restorations to ABCD-certified, ITR-trained dentists as follows:

(i) A one-surface, resin-based composite restoration with a maximum of five teeth per visit; and

(ii) Restorations on a tooth can be done every twelve months through age five, or until the client can be definitively treated for a restoration.

(g) Therapeutic pulpotomy;

(h) Prefabricated stainless steel crowns on primary teeth, as specified in the agency's current published documents;

(i) Resin-based composite crowns on anterior primary teeth; and

(j) Other dental-related services, as specified in the agency's current published documents.

(4) The client's record must show documentation of the ABCD program services provided.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535A-0010 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter.

"Adolescent dentition" means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.

"Appliance placement" means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

"Cleft" means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

- (a) Cleft lip;
- (b) Cleft palate (involving the roof of the mouth); or
- (c) Facial clefts (e.g., macrostomia).

"Comprehensive full orthodontic treatment" means utilizing fixed orthodontic appliances for treatment of adolescent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

"Craniofacial anomalies" means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

"Craniofacial team" means a cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

"Crossbite" means an abnormal relationship of a tooth or teeth to the opposing tooth or teeth, in which normal buccolingual or labiolingual relations are reversed.

"Dental dysplasia" means an abnormality in the development of the teeth.

"Ectopic eruption" means a condition in which a tooth erupts in an abnormal position or is fifty percent blocked out of its normal alignment in the dental arch.

"EPSDT" means the agency's early and periodic screening, diagnostic, and treatment program for clients twenty years of age and younger as described in chapter 182-534 WAC.

"Hemifacial microsomia" means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face is smaller in size).

"Interceptive orthodontic treatment" means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental cross-bite, or recovery of recent minor space loss where overall space is adequate.

"Limited orthodontic treatment" means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing problem, or at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

"Malocclusion" means improper alignment of biting or chewing surfaces of upper and lower teeth or abnormal relationship of the upper and lower dental arches.

"Maxillofacial" means relating to the jaws and face.

"Occlusion" means the relation of the upper and lower teeth when in functional contact during jaw movement.

"Orthodontics" means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

"Orthodontist" means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

"Permanent dentition" means those teeth that succeed the primary teeth and the additional molars that erupt.

~~("Prepaid ambulatory health plan" or "PAHP" see WAC 182-538-050. For the purpose of this chapter, dental managed care contractors are considered PAHPs.)~~

"Primary dentition" means teeth that develop and erupt first in order of time and are normally shed and replaced by permanent teeth.

"Transitional dentition" means the final phase from primary to permanent dentition, in which most primary teeth have been lost or are in the process of exfoliating and the permanent successors are erupting.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535A-0020 Client eligibility. (1) Subject to the limitations of this chapter, the medicaid agency covers medically necessary orthodontic treatment and orthodontic-related services for severe handicapping malocclusions, craniofacial anomalies, or cleft lip or palate, for eligible clients through age twenty. Refer to WAC 182-501-0060 to see which Washington apple health programs include orthodontic services in their benefit package.

~~(2) ((Clients enrolled in an agency contracted managed care organization (MCO) or prepaid ambulatory health plan (PAHP) must receive their orthodontic services through that MCO or PAHP, except as described under WAC 182-538-095. Clients whose benefit package includes dental services are assigned a dental managed care plan. If a client is not eligible for a dental managed care plan, they receive services on a fee for service basis.~~

~~(a) All clients are eligible for dental managed care benefits with the exception of clients receiving apple health benefits under a state-only program.~~

~~(b) Clients eligible for dental managed care on a voluntary basis include:~~

- ~~(i) American Indian/Alaska native (AI/AN) clients; and~~
- ~~(ii) Clients who reside in a county that has only one MCO or PAHP.~~

~~(c) See WAC 182-538-060 for more details regarding managed care choice and assignment.~~

~~(d) If a client receiving orthodontic services through an MCO or PAHP chooses to transfer to another MCO or PAHP or to fee for service (FFS) during active orthodontic treatment, the MCO or PAHP that initiated the orthodontic treatment remains responsible for payment until completion of the orthodontic treatment.~~

~~(e) If an FFS client transfers to an MCO or PAHP during active orthodontic treatment, the MCO or PAHP assumes~~

payment responsibility until completion of the orthodontic treatment.

(3)) Eligible clients may receive the same orthodontic treatment and orthodontic-related services in recognized out-of-state bordering cities on the same basis as if provided in-state. See WAC 182-501-0175.

((4)) (3) Eligible clients may receive the same orthodontic treatment and orthodontic-related services for continued orthodontic treatment when originally rendered by a non-medicaid or out-of-state provider as follows:

(a) The provider must submit the initial orthodontic case study and treatment plan records with the request for continued treatment.

(b) The agency evaluates the initial orthodontic case study and treatment plan to determine if the client met the agency's orthodontic criteria per WAC 182-535A-0040 (1) through (3).

(c) The agency determines continued treatment duration based on the client's current orthodontic conditions.

(d) The agency does not cover continued treatment if the client's initial condition did not meet the agency's criteria for the initial orthodontic treatment. The agency pays a deband and retainer fee if the client does not meet the initial orthodontic treatment criteria.

start of the 2019-21 operating budget is necessary for the preservation of the public health and general welfare, as this program provides financial grants to persons who are pregnant and in need. Therefore, awaiting the normal rule-making process and delaying increased financial support for recipients of this program would be contrary to the public interest.

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 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: June 20, 2019.

Katherine I. Vasquez
Rules Coordinator

WSR 19-14-055
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 28, 2019, 8:57 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: The department is amending WAC 388-478-0027 What are the payment standards for pregnant women assistance (PWA)?

This change is necessary to increase the payment standard for the PWA program, effective July 1, 2019, based on the 2019-21 operating budget.

The department is currently proceeding with the permanent rule-making process and filed a preproposal statement of inquiry as WSR 19-13-098 on June 19, 2019.

Citation of Rules Affected by this Order: Amending WAC 388-478-0027.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335.

Other Authority: ESHB 1109 (chapter 415, Laws of 2019).

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: Increasing the payment standard for the PWA program beginning July 1, 2019, with the

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-478-0027 What are the payment standards for pregnant women assistance (PWA)? (1) The payment standards for PWA cash assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard
1	\$(197) 363

(2) The payment standards for PWA cash assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	\$(120) 221

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 19-14-058
EMERGENCY RULES
HEALTH CARE AUTHORITY
[Filed June 28, 2019, 9:49 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: The agency is amending this section to add dental health aide therapists to the list of eligible providers the agency will reimburse for providing services to medicaid clients in tribal facilities.

Citation of Rules Affected by this Order: Amending WAC 182-502-0002.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1109, section 211(49), 2019 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: See purpose.

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 0.

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

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

Date Adopted: June 28, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-054, filed 2/27/14, effective 3/30/14)

WAC 182-502-0002 Eligible provider types. The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
 - (a) Advanced registered nurse practitioners;
 - (b) Anesthesiologists;
 - (c) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531-1410 through 182-531-1436:
 - (i) Certified agency-affiliated counselors;
 - (ii) Certified counselors; and
 - (iii) Certified counselor advisors.
 - (d) Audiologists;
 - (e) Chemical dependency professionals:
 - (i) Mental health care providers; and
 - (ii) Peer counselors.
 - (f) Chiropractors;
 - (g) Dentists;
 - (h) Dental hygienists;

- (i) Denturists;
- (j) Dietitians or nutritionists;
- (k) Hearing aid fitters/dispensers;
- (l) Marriage and family therapists;
- (m) Mental health counselors;
- (n) Mental health care providers;
- (o) Midwives;
- (p) Naturopathic physicians;
- (q) Nurse anesthetist;
- (r) Ocularists;
- (s) Occupational therapists;
- (t) Ophthalmologists;
- (u) Opticians;
- (v) Optometrists;
- (w) Orthodontists;
- (x) Orthotist;
- (y) Osteopathic physicians;
- (z) Osteopathic physician assistants;
- (aa) Peer counselors;
- (bb) Podiatric physicians;
- (cc) Pharmacists;
- (dd) Physicians;
- (ee) Physician assistants;
- (ff) Physical therapists;
- (gg) Prosthetist;
- (hh) Psychiatrists;
- (ii) Psychologists;
- (jj) Radiologists;
- (kk) Registered nurse delegators;
- (ll) Registered nurse first assistants;
- (mm) Respiratory therapists;
- (nn) Social workers; (~~and~~)
- (oo) Speech/language pathologists; and
- (pp) Dental health aide therapists, as provided in chapter 70.350 RCW.
 - (2) Agencies, centers and facilities:
 - (a) Adult day health centers;
 - (b) Ambulance services (ground and air);
 - (c) Ambulatory surgery centers (medicare-certified);
 - (d) Birthing centers (licensed by the department of health);
 - (e) Cardiac diagnostic centers;
 - (f) Case management agencies;
 - (g) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of behavioral health and recovery (DBHR), and contracted through either:
 - (i) A county under chapter 388-810 WAC; or
 - (ii) DBHR to provide chemical dependency treatment services.
 - (h) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DBHR);
 - (i) Community AIDS services alternative agencies;
 - (j) Community mental health centers;
 - (k) Diagnostic centers;
 - (l) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
 - (m) Family planning clinics;
 - (n) Federally qualified health centers (designated by the federal department of health and human services);

- (o) Genetic counseling agencies;
 - (p) Health departments;
 - (q) Health maintenance organization (HMO)/managed care organization (MCO);
 - (r) HIV/AIDS case management;
 - (s) Home health agencies;
 - (t) Hospice agencies;
 - (u) Hospitals;
 - (v) Indian health service facilities/tribal 638 facilities;
 - (w) Tribal or urban Indian clinics;
 - (x) Inpatient psychiatric facilities;
 - (y) Intermediate care facilities for the mentally retarded (ICF-MR);
 - (z) Kidney centers;
 - (aa) Laboratories (CLIA certified);
 - (bb) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
 - (cc) Neuromuscular and neurodevelopmental centers;
 - (dd) Nurse services/delegation;
 - (ee) Nursing facilities (approved by the DSHS aging and long-term support administration);
 - (ff) Pathology laboratories;
 - (gg) Pharmacies;
 - (hh) Private duty nursing agencies;
 - (ii) Radiology - Stand-alone clinics;
 - (jj) Rural health clinics (medicare-certified);
 - (kk) School districts and educational service districts;
 - (ll) Sleep study centers; and
 - (mm) Washington state school districts and educational service districts.
- (3) Suppliers of:
- (a) Blood, blood products, and related services;
 - (b) Durable and nondurable medical equipment and supplies;
 - (c) Complex rehabilitation technologies;
 - (d) Infusion therapy equipment and supplies;
 - (e) Prosthetics/orthotics;
 - (f) Hearing aids; and
 - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
- (a) Transportation brokers;
 - (b) Spoken language interpreter services agencies;
 - (c) Independent sign language interpreters; and
 - (d) Eyeglass and contact lens providers.

WSR 19-14-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-130—Filed June 28, 2019, 11:25 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: Remove Columbia River salmon and steelhead endorsement requirements.

Citation of Rules Affected by this Order: Amending WAC 220-220-060 and 220-220-210.

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 remove requirements for the Columbia River salmon and steelhead endorsement within the Columbia River and its tributaries. In the legislative session ending April 2019, the Washington state legislature did not approve an extension of the Columbia River salmon and steelhead endorsement. The department is in the process of developing permanent rules. Given the immediacy of the issue, an emergency rule is needed until permanent rules can be adopted.

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: June 28, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-220-06000A Reduced rate annual fish Washington license, and license upgrades. Notwithstanding the provisions of WAC 220-220-060, effective July 1, 2019 until further notice: The fish Washington license does not include the Columbia River salmon and steelhead endorsement.

NEW SECTION

WAC 220-220-21000A Columbia River endorsement. Notwithstanding the provisions of WAC 220-220-210, effective immediately until further notice: Anglers are not required to purchase or have in their possession the Columbia River endorsement to fish for salmon or steelhead in the waters of the Columbia River or any of its tributaries.

WSR 19-14-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-144—Filed June 28, 2019, 11:30 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: Amends recreational fishing rules for southwest rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000W; and amending WAC 220-312-030.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the state's share of the fishing plans agreed to with resource comanagers at the 2019 North of Falcon proceedings. These emergency rules are necessary to meet conservation objectives and because the current permanent rule is inconsistent with the agreed 2019 North of Falcon fishery sharing package. 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: June 28, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000W Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective July 1 through July 31, 2019:

(1) **Cowlitz River (Cowlitz Co.):** from the boundary markers at mouth to Lexington Bridge.

(a) Night closure for salmon and steelhead fishing only.

(b) Steelhead: Daily limit 1 hatchery steelhead: minimum length 20 inches.

(2) **Drano Lake (Skamania Co.):**

(a) Night closure for all species.

(b) Salmon and steelhead: Daily limit 2 hatchery Chinook or 1 hatchery Chinook and 1 hatchery steelhead. Release all other salmon.

(3) **Elochoman River (Wahkiakum Co.):**

(a) Release all salmon other than hatchery Chinook.

(4) **Grays River (Wahkiakum Co.):**

(a) Salmon: Only hatchery Chinook may be retained.

(5) **Grays River, West Fork (Wahkiakum Co.):**

(a) Salmon: Only hatchery Chinook may be retained.

(6) **Kalama River (Cowlitz Co.):**

(a) From the mouth to railroad bridge below I-5:

i. Night closure for all species.

ii. Steelhead: Daily limit 1 hatchery steelhead: minimum length 20 inches.

(b) From the railroad bridge below Interstate 5 to Modrow Bridge: From Modrow Bridge downstream to the markers approximately 1,000 feet below the temporary rack when the rack is installed below Modrow Bridge: closed waters.

(7) **Klickitat River (Klickitat Co.):** From the mouth to Fisher Hill bridge:

(a) Night closure for all species.

(b) Steelhead: Daily limit 1 hatchery steelhead: minimum length 20 inches.

(8) **Lewis River (Clark/Cowlitz Co.):**

(a) From mouth to the mouth of the East Fork Lewis River.

i. Night closure for salmon and steelhead fishing.

ii. Steelhead: Daily limit 1 hatchery steelhead: minimum length 20 inches.

(b) From Eagle Cliff Bridge up to and including Muddy River, including tributaries.

i. Selective gear rules.

ii. Open through July 15.

iii. Game fish: statewide minimum length/daily limit, except

1. Steelhead: release all steelhead

2. Trout: Daily limit 10; minimum length 8 inches.

Release wild trout.

(c) From above Muddy River to the lower falls and tributaries:

i. Selective gear rules.

ii. Release all fish.

(9) **Swift Reservoir (Skamania Co.):** from dam to posted markers approximately 3/8 mile below Eagle Cliff Bridge

(a) Salmon

i. Salmon count toward trout daily limit.

ii. Minimum length 8 inches.

iii. No catch record card required.

(10) **Washougal River (Clark Co.):**

(a) From the mouth to the boat ramp at the WDFW county line access site:

(i) From 1,000 feet (or posted markers) below to 200 feet above the temporary weir when the weir is installed in the river: Closed waters.

(ii) Night closure.

(iii) July 1, 2019 until further notice: Anti-snagging rule.

(b) From the boat ramp at the WDFW county line access site to the bridge at Salmon Falls:

(i) From 1,000 feet (or posted markers) below to 200 feet above the temporary weir when the weir is installed in the river: Closed waters.

(11) **White Salmon River (Klickitat/Skamania counties):** from the mouth (Burlington Northern Railroad Bridge) to the county road bridge below the former location of the powerhouse:

(a) Night closure for salmon and steelhead.

(b) Salmon and steelhead: Daily limit 2; no more than 2 salmon or 1 salmon and 1 hatchery steelhead. Release wild Chinook.

(12) **Wind River (Skamania Co.):** From the mouth to 400 feet below Shipherd Falls:

(a) Night closure for salmon and steelhead fishing.

(b) Salmon and steelhead: Daily limit 6, no more than 2 adult salmon or 1 adult salmon and 1 hatchery steelhead. Release wild Chinook and wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2019:

WAC 220-312-03000W Freshwater exceptions to state-wide rules—Southwest.

WSR 19-14-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-146—Filed June 28, 2019, 11:34 a.m., effective July 1, 2019, 6:00 a.m.]

Effective Date of Rule: July 1, 2019, 6:00 a.m.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000H; and amending WAC 220-359-020.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

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

Reasons for this Finding: This rule reopens the summer tribal commercial gillnet fisheries above Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on June 12 and June 27, 2019. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at 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: June 28, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000I Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: Zone 6 tributary fisheries

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

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

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence. Sales of fish are allowed after the open period concludes, as long as the fish were landed during the open period.

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

(a) Season: 6 AM Monday, July 1 to 6 PM Wednesday July 3

(b) Gear: Set and Drift Gill nets with a 7-inch minimum mesh size

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.

(d) Standard river mouth and dam closed areas applicable to gillnet gear, except the Spring Creek Hatchery sanctuary is not in effect during the summer management period.

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

(a) Season: Immediately through 11:59 PM July 31, 2019

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead may be sold or kept for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may also be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.

(d) Standard sanctuaries in place for this gear type, except the Spring Creek Hatchery sanctuary is not in effect.

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(5) Fish caught during the open period may be sold after the period concludes.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 1, 2019:

WAC 220-359-02000H Columbia River salmon seasons above Bonneville Dam. (19-123)

WSR 19-14-070**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed June 28, 2019, 2:26 p.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: The department is amending WAC 388-105-0005 in order to update the tables of rates in WAC 388-105-0005 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 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 rule needs to reflect the appropriate rate amounts to avoid confusion and possible interruption of service.

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: June 26, 2019.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-21-001, filed 10/3/18, effective 11/3/18)

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 Add-on))	((AL With Capital Add-on))	((ARC/EARC Without Capital Add-On))	((ARC/EARC With Capital Add-On))	AFH
A Low	((73.34))	((81.18))	((52.02))	((54.44))	((71.96)) <u>81.40</u>
A Med	((79.35))	((87.19))	((58.95))	((61.37))	((74.74)) <u>84.53</u>
A High	((88.99))	((96.83))	((64.70))	((67.12))	((81.23)) <u>91.82</u>
B Low	((73.34))	((81.18))	((52.02))	((54.44))	((73.40)) <u>83.02</u>
B Med	((81.78))	((89.62))	((65.89))	((68.31))	((79.78)) <u>90.20</u>
B Med-High	((92.54))	((100.38))	((70.04))	((72.46))	((86.56)) <u>97.81</u>
B High	((97.39))	((105.23))	((79.97))	((82.39))	((89.05)) <u>100.62</u>
C Low	((79.35))	((87.19))	((58.95))	((61.37))	((81.03)) <u>91.60</u>
C Med	((88.99))	((96.83))	((73.83))	((76.28))	((93.33)) <u>105.42</u>
C Med-High	((110.64))	((118.48))	((98.27))	((100.69))	((98.41)) <u>107.80</u>
C High	((111.74))	((119.58))	((99.22))	((101.64))	((99.76)) <u>110.28</u>
D Low	((81.78))	((89.62))	((79.50))	((81.92))	((86.46)) <u>97.70</u>
D Med	((90.79))	((98.63))	((92.02))	((94.44))	((95.25)) <u>107.58</u>
D Med-High	((117.26))	((125.10))	((116.86))	((119.28))	((114.84)) <u>122.78</u>
D High	((126.30))	((134.14))	((126.30))	((128.72))	((130.57)) <u>135.29</u>
E Med	((152.53))	((160.37))	((152.53))	((154.95))	((157.48)) <u>162.20</u>
E High	((178.76))	((186.60))	((178.76))	((181.18))	((184.42)) <u>189.14</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	((67.30))	((74.64))	((52.02))	((54.44))	((70.78)) <u>79.00</u>
A Med	((70.94))	((78.28))	((56.64))	((59.06))	((73.49)) <u>81.99</u>
A High	((86.59))	((93.93))	((61.71))	((64.13))	((79.80)) <u>88.92</u>
B Low	((67.30))	((74.64))	((52.02))	((54.44))	((72.18)) <u>80.55</u>
B Med	((76.93))	((84.27))	((62.43))	((64.85))	((78.39)) <u>87.38</u>
B Med-High	((87.09))	((94.43))	((66.35))	((68.77))	((84.98)) <u>94.62</u>
B High	((94.98))	((102.32))	((77.73))	((80.15))	((87.41)) <u>97.30</u>
C Low	((70.94))	((78.28))	((56.87))	((59.29))	((79.61)) <u>88.72</u>
C Med	((86.59))	((93.93))	((72.92))	((75.31))	((91.57)) <u>101.87</u>
C Med-High	((107.01))	((114.35))	((91.33))	((93.75))	((93.63)) <u>104.13</u>
C High	((108.09))	((115.43))	((97.13))	((99.55))	((97.03)) <u>106.49</u>
D Low	((76.93))	((84.27))	((78.41))	((80.83))	((84.89)) <u>94.52</u>
D Med	((88.34))	((95.68))	((90.18))	((92.60))	((93.44)) <u>103.92</u>
D Med-High	((113.42))	((120.76))	((113.99))	((116.41))	((111.37)) <u>118.39</u>
D High	((122.85))	((130.19))	((122.85))	((125.27))	((126.36)) <u>131.08</u>
E Med	((147.82))	((155.16))	((147.82))	((150.24))	((151.99)) <u>156.71</u>
E High	((172.77))	((180.11))	((172.77))	((175.19))	((177.61)) <u>182.33</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	((66.13))	((73.79))	((52.02))	((54.44))	((69.07)) <u>76.61</u>
A Med	((70.94))	((78.60))	((55.50))	((57.92))	((71.67)) <u>79.44</u>
A High	((86.59))	((94.25))	((60.73))	((63.15))	((77.73)) <u>86.02</u>
B Low	((66.13))	((73.79))	((52.02))	((54.44))	((70.42)) <u>78.07</u>
B Med	((76.93))	((84.59))	((61.27))	((63.69))	((76.38)) <u>84.56</u>
B Med-High	((87.09))	((94.25))	((65.11))	((67.53))	((82.71)) <u>91.43</u>
B High	((94.98))	((102.64))	((73.55))	((75.97))	((85.04)) <u>93.97</u>
C Low	((70.94))	((78.60))	((55.50))	((57.92))	((77.55)) <u>85.83</u>
C Med	((86.59))	((94.25))	((68.96))	((71.38))	((89.04)) <u>98.31</u>
C Med-High	((107.01))	((114.67))	((87.87))	((90.29))	((91.01)) <u>100.46</u>
C High	((108.09))	((115.75))	((91.83))	((94.25))	((93.08)) <u>102.70</u>
D Low	((76.93))	((84.59))	((74.14))	((76.56))	((82.62)) <u>91.34</u>
D Med	((88.34))	((96.00))	((85.28))	((87.70))	((90.83)) <u>100.26</u>
D Med-High	((113.42))	((121.08))	((107.76))	((110.18))	((103.46)) <u>113.99</u>
D High	((116.14))	((123.80))	((116.14))	((118.56))	((119.54)) <u>124.26</u>
E Med	((139.74))	((147.40))	((139.74))	((142.16))	((143.76)) <u>148.48</u>
E High	((163.33))	((170.99))	((163.33))	((165.75))	((167.99)) <u>172.71</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.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE				
HIGH COST COUNTIES***				
CARE CLASSIFICATION	<u>AL Without Capital</u> <u>Add-On</u>	<u>AL With Capital</u> <u>Add-On</u>	<u>ARC Without Capital</u> <u>Add-On</u>	<u>EARC Without</u> <u>Capital Add-On</u>
<u>A Low</u>	<u>\$73.34</u>	<u>\$81.44</u>	<u>\$56.18</u>	<u>\$58.52</u>
<u>A Med</u>	<u>\$79.35</u>	<u>\$87.45</u>	<u>\$71.90</u>	<u>\$75.31</u>
<u>A High</u>	<u>\$88.99</u>	<u>\$97.09</u>	<u>\$82.62</u>	<u>\$86.75</u>
<u>B Low</u>	<u>\$73.34</u>	<u>\$81.44</u>	<u>\$57.33</u>	<u>\$59.75</u>
<u>B Med</u>	<u>\$85.24</u>	<u>\$93.34</u>	<u>\$81.20</u>	<u>\$85.24</u>
<u>B Med-High</u>	<u>\$92.54</u>	<u>\$100.64</u>	<u>\$86.70</u>	<u>\$91.12</u>
<u>B High</u>	<u>\$97.39</u>	<u>\$105.49</u>	<u>\$92.21</u>	<u>\$96.99</u>
<u>C Low</u>	<u>\$79.35</u>	<u>\$87.45</u>	<u>\$75.07</u>	<u>\$78.70</u>
<u>C Med</u>	<u>\$88.99</u>	<u>\$97.09</u>	<u>\$84.29</u>	<u>\$88.54</u>
<u>C Med-High</u>	<u>\$110.64</u>	<u>\$118.74</u>	<u>\$98.27</u>	<u>\$98.27</u>
<u>C High</u>	<u>\$111.74</u>	<u>\$119.84</u>	<u>\$99.22</u>	<u>\$99.22</u>
<u>D Low</u>	<u>\$88.02</u>	<u>\$96.12</u>	<u>\$83.80</u>	<u>\$88.02</u>
<u>D Med</u>	<u>\$90.79</u>	<u>\$98.89</u>	<u>\$92.02</u>	<u>\$92.02</u>
<u>D Med-High</u>	<u>\$117.26</u>	<u>\$125.36</u>	<u>\$116.86</u>	<u>\$116.86</u>
<u>D High</u>	<u>\$126.30</u>	<u>\$134.40</u>	<u>\$126.30</u>	<u>\$126.30</u>
<u>E Med</u>	<u>\$152.53</u>	<u>\$160.63</u>	<u>\$152.53</u>	<u>\$152.53</u>
<u>E High</u>	<u>\$178.76</u>	<u>\$186.86</u>	<u>\$178.76</u>	<u>\$178.76</u>

***High cost counties: King and Snohomish.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE				
MEDIUM-HIGH COST COUNTIES****				
CARE CLASSIFICATION	<u>AL Without Capital</u> <u>Add-On</u>	<u>AL With Capital</u> <u>Add-On</u>	<u>ARC Without Capital</u> <u>Add-On</u>	<u>EARC Without</u> <u>Capital Add-On</u>
<u>A Low</u>	<u>\$67.30</u>	<u>\$74.90</u>	<u>\$53.50</u>	<u>\$55.66</u>
<u>A Med</u>	<u>\$71.16</u>	<u>\$78.76</u>	<u>\$68.01</u>	<u>\$71.16</u>
<u>A High</u>	<u>\$86.59</u>	<u>\$94.19</u>	<u>\$77.89</u>	<u>\$81.71</u>
<u>B Low</u>	<u>\$67.30</u>	<u>\$74.90</u>	<u>\$57.24</u>	<u>\$56.80</u>
<u>B Med</u>	<u>\$80.32</u>	<u>\$84.91</u>	<u>\$76.59</u>	<u>\$80.32</u>
<u>B Med-High</u>	<u>\$87.09</u>	<u>\$94.69</u>	<u>\$81.67</u>	<u>\$85.74</u>
<u>B High</u>	<u>\$94.98</u>	<u>\$102.58</u>	<u>\$86.74</u>	<u>\$91.16</u>
<u>C Low</u>	<u>\$74.28</u>	<u>\$81.88</u>	<u>\$70.93</u>	<u>\$74.28</u>
<u>C Med</u>	<u>\$86.59</u>	<u>\$94.19</u>	<u>\$79.44</u>	<u>\$83.36</u>
<u>C Med-High</u>	<u>\$107.01</u>	<u>\$114.61</u>	<u>\$91.33</u>	<u>\$91.33</u>
<u>C High</u>	<u>\$108.09</u>	<u>\$115.69</u>	<u>\$97.13</u>	<u>\$97.13</u>

CARE CLASSIFICATION	<u>AL Without Capital Add-On</u>	<u>AL With Capital Add-On</u>	<u>ARC Without Capital Add-On</u>	<u>EARC Without Capital Add-On</u>
<u>D Low</u>	<u>\$82.88</u>	<u>\$90.48</u>	<u>\$78.99</u>	<u>\$82.88</u>
<u>D Med</u>	<u>\$88.34</u>	<u>\$95.94</u>	<u>\$90.18</u>	<u>\$90.18</u>
<u>D Med-High</u>	<u>\$113.42</u>	<u>\$121.02</u>	<u>\$113.99</u>	<u>\$113.99</u>
<u>D High</u>	<u>\$122.85</u>	<u>\$130.45</u>	<u>\$122.85</u>	<u>\$122.85</u>
<u>E Med</u>	<u>\$147.82</u>	<u>\$155.42</u>	<u>\$147.82</u>	<u>\$147.82</u>
<u>E High</u>	<u>\$172.77</u>	<u>\$180.37</u>	<u>\$172.77</u>	<u>\$172.77</u>

****Medium-High cost counties: Benton, Clark, Franklin, Grays Harbor, Kitsap, Kittitas, Klickitat, Lewis, Mason, Okanogan, Pacific, Pierce, Skagit, Skamania, Wahkiakum, and Whatcom.

<u>COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE</u>				
<u>STANDARD COST COUNTIES*****</u>				
CARE CLASSIFICATION	<u>AL Without Capital Add-On</u>	<u>AL With Capital Add-On</u>	<u>ARC Without Capital Add-On</u>	<u>EARC Without Capital Add-On</u>
<u>A Low</u>	<u>\$66.13</u>	<u>\$74.05</u>	<u>\$52.73</u>	<u>\$57.84</u>
<u>A Med</u>	<u>\$70.94</u>	<u>\$78.86</u>	<u>\$66.89</u>	<u>\$69.96</u>
<u>A High</u>	<u>\$86.59</u>	<u>\$94.51</u>	<u>\$76.54</u>	<u>\$80.27</u>
<u>B Low</u>	<u>\$66.13</u>	<u>\$74.05</u>	<u>\$53.76</u>	<u>\$55.95</u>
<u>B Med</u>	<u>\$78.91</u>	<u>\$86.83</u>	<u>\$75.27</u>	<u>\$78.91</u>
<u>B Med-High</u>	<u>\$87.09</u>	<u>\$95.01</u>	<u>\$80.22</u>	<u>\$84.20</u>
<u>B High</u>	<u>\$94.98</u>	<u>\$102.90</u>	<u>\$85.18</u>	<u>\$89.49</u>
<u>C Low</u>	<u>\$73.01</u>	<u>\$80.93</u>	<u>\$69.75</u>	<u>\$73.01</u>
<u>C Med</u>	<u>\$86.59</u>	<u>\$94.51</u>	<u>\$78.05</u>	<u>\$81.88</u>
<u>C Med-High</u>	<u>\$107.01</u>	<u>\$114.93</u>	<u>\$87.87</u>	<u>\$87.87</u>
<u>C High</u>	<u>\$108.09</u>	<u>\$116.01</u>	<u>\$91.83</u>	<u>\$91.83</u>
<u>D Low</u>	<u>\$81.41</u>	<u>\$89.33</u>	<u>\$77.61</u>	<u>\$81.41</u>
<u>D Med</u>	<u>\$88.34</u>	<u>\$96.26</u>	<u>\$85.28</u>	<u>\$85.28</u>
<u>D Med-High</u>	<u>\$113.42</u>	<u>\$121.34</u>	<u>\$107.76</u>	<u>\$107.76</u>
<u>D High</u>	<u>\$116.14</u>	<u>\$124.06</u>	<u>\$116.14</u>	<u>\$116.14</u>
<u>E Med</u>	<u>\$139.74</u>	<u>\$147.66</u>	<u>\$139.74</u>	<u>\$139.74</u>
<u>E High</u>	<u>\$163.33</u>	<u>\$171.25</u>	<u>\$163.33</u>	<u>\$163.33</u>

*****Standard cost counties: Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Island, Jefferson, Lincoln, Pend Orielle, San Juan, Spokane, Stevens, Thurston, Walla Walla, Whitman, and Yakima.

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

WSR 19-14-077
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 1, 2019, 8:58 a.m., effective July 1, 2019, 8:58 a.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 originally adopted on July 1, 2018 (WSR 18-14-076), on an emergency basis when DCYF began operations. These emergency rules are being extended while the department goes through the permanent rule-making process. 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: July 1, 2019.

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 July 1, 2019, this chapter, not chapter 388-02 or 170-03 WAC applies to all cases from programs administered by DCYF in which DCYF or its predecessor agencies issued a written notice of an appealable decision, including written notices issued before July 1, 2019. A petition for review of an initial order filed before July 1, 2019, will be reviewed by the body to which the petition was filed.

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 19-14-088
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed July 1, 2019, 10:34 a.m.]

The department of children, youth, and families rescinds the following:

WSR 19-13-062, Emergency administrative hearing rules, chapter 110-03 WAC, filed June 14, 2019.

WSR 19-12-023, Emergency provisional hires rules, chapter 110-05 WAC, filed May 28, 2019.

WSR 19-12-021, Emergency child care center rates rules in chapter 110-15 WAC, filed May 28, 2019.

Please contact Brenda Villarreal at 360-902-7956 if you have any questions or need anything further.

Brenda Villarreal
Rules Coordinator

WSR 19-14-110
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-149—Filed July 2, 2019, 4:27 p.m., effective July 2, 2019, 4:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational fishing rules for the Chehalis, Newaukum, and Skookumchuck rivers.

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 needed to close the Chehalis River and listed tributaries to fishing to protect spring Chinook. Streams and rivers where spring Chinook hold and stage through the summer are experiencing lower than normal stream flows. Low stream flows decrease holding and staging refuges and elevates the vulnerability and pressure on spring Chinook. Spring Chinook hold and stage in the Chehalis River, South Fork Chehalis River, North and South forks of the Newaukum River and the Skookumchuck River. Any encounters of spring Chinook could subject these fish to stress, injury, or death. 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: July 2, 2019.

Kelly Cunningham
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000S Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective immediately until further notice, the following waters are closed to all fishing:

- 1) Chehalis River (Grays Harbor County)
- 2) Chehalis River, South Fork (Grays Harbor County)
- 3) Newaukum River, North Fork (Lewis County)
- 4) Newaukum River, South Fork (Lewis County)
- 5) Skookumchuck River (Lewis/Thurston County)

**WSR 19-14-122
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed July 3, 2019, 10:22 a.m., effective July 3, 2019, 10:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule provides for the issuance of reciprocal licenses and temporary permits in lieu of certificates of competency for electricians coming from another state as authorized by RCW 19.28.231.

Citation of Rules Affected by this Order: New WAC 296-46B-939.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.031 and 19.28.251.

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: There is an increase in construction in the state and a shortage of journey level electricians to meet the demand. According to the Bureau of Labor Statistics, employment for electricians in the state will grow eighteen percent from 2016 to 2026, twice as fast as the national average, surpassed only by Colorado, Arizona, Nevada, Utah and Florida. Job openings greatly outpace supply. The impacts of the shortage of qualified electricians include: Small projects are delayed because electricians seek work on large projects that offer inflated wages; companies

stop bidding, causing delays in starting new projects; projects take longer to complete, resulting in cost overruns; public safety risks associated with hazards created when unqualified individuals step in to perform electrical work when qualified electricians are not available.

To help address these issues, the emergency rule provides for the issuance of temporary permits in lieu of certificates of competency for electricians as authorized by RCW 19.28.231. To be eligible for a temporary permit under the emergency rule, electricians must have completed a four-year journey level electrical apprenticeship program that is equivalent to one approved in Washington or possess an equivalent journey level electrician certificate obtained by examination in another state, and meet the requirements under RCW 19.28.181. Successful applicants receive a temporary electrician permit and approval to sit for a certification examination. The temporary electrician permit is only valid for ninety days and is not renewable. A permit is valid only on jobsites where a general electrical contractor licensed in Washington state has requested and received permission to employ temporary electricians from the department's chief electrical inspector. To remain eligible, contractors must employ at least fifty certified electricians on a jobsite where they employ temporary electricians and regularly report the status of temporary electricians.

Substantiation to limit eligibility to employ temporary electricians to contractors employing fifty or more Washington journey level electricians:

- Projects of a magnitude that require fifty electricians most likely have levels of engineering design and oversight far beyond that at lesser projects where electricians often work in isolation.
- Temporary electricians likely pose the least risk of danger to life and property when working under the scrutiny of at least fifty Washington certified electricians.
- Without a threshold, risk of danger to life and property increases. Not establishing a threshold is contrary to the electrical board's advice in 2016 when they cautioned the department not to allow temporary electricians on jobsites where their installations are likely to go unscrutinized.

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 1, Amended 0, Repealed 0.

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

Date Adopted: July 3, 2019.

Joel Sacks
Director

NEW SECTION**WAC 296-46B-939 Temporary electrician permits—
Reciprocal agreements.****General.**

(1) In lieu of certificate of competency requirements in WAC 296-46B-940(3), the department may issue nonrenewable temporary electrician permits to applicants who meet eligibility requirements in subsection (5)(b)(i) or (ii) of this section.

(2) Temporary electrician permits expire ninety days from the date of issue.

(3) A temporary electrician permit is valid only while employed by the contractor named on the permit at a job site where that contractor has written permission from the chief electrical inspector to employ temporary electricians.

(4) Applicants must apply using a form prescribed by the department. Applications are a request for a permit and a journey level electrician examination. The department will deny an application if an applicant:

(a) Fails to qualify for an **(01)** general journey level electrician examination; or

(b) Possessed a temporary electrician permit at any time; or

(c) Previously passed or failed an examination for a Washington **(01)** general journey level electrician certificate; or

(d) Owes money because of an outstanding final judgment(s) to the department; or

(e) Holds a **(01)** master or general journey level electrician certificate that is in revoked or suspended status.

Temporary electrician permits.

(5) Applicants may be eligible for temporary electrician permits while awaiting an examination for a **(01)** general journey level certificate of competency if they can present appropriate evidence of experience gained in another state equivalent to that required by RCW 19.28.181. Appropriate evidence is limited to completion of a four-year journey level electrical apprenticeship program or possession of an equivalent out-of-state journey level electrician credential obtained through examination by a state licensing authority.

To qualify for a temporary electrician permit and qualify for an examination for a **(01)** general journey level certificate of competency, applicants must:

(a) Submit an application for a temporary electrician permit and provide a legible photocopy of their government issued photo identification and pay an application fee of one hundred twenty-four dollars (includes original certificate fees, temporary permit and journey level examination application fees) sixty-two dollars is nonrefundable after application is submitted; and

(b) Provide evidence prescribed by (b)(i) or (ii) of this subsection and proof of in-class training required by (b)(iii) of this subsection with their application:

(i) Evidence of completion of a four-year journey level electrical apprenticeship program equivalent to a program approved in Washington. In completing the program, applicants must have worked in the electrical construction trade for a minimum of eight thousand hours. At least four thou-

sand of those hours must be in industrial or commercial electrical installation. Evidence of completion must be in the form of a notarized letter signed by the apprenticeship training director of the program the applicant completed. The letter must include: The name of the apprenticeship program; contact phone number for the program; address of the program; applicant's legal name; the date the applicant began the program; the date the applicant completed the program; and total hours of supervised work experience required to complete the program.

(ii) Evidence from a state licensing authority that the applicant qualified for and possesses a journey level certificate of competency obtained by examination in that state. Acceptable evidence can be in the form of a legible photocopy of a license or certificate accompanied by a verifiable second document such as a detailed letter of good standing or a webpage screen print from a state licensing authority.

(iii) Evidence of completion of at least ninety-six hours of in-class training on the National Electrical Code, basic electrical theory or the use of the Washington electrical laws and rules.

(6) Temporary electricians must possess, wear, and visibly display a valid temporary electrician permit in accordance with WAC 296-46B-940(3).

Employing temporary electricians.

(7) Only principal members of **(01)** general electrical contractors are eligible to request permission to employ temporary electricians. Address all requests to the attention of the chief electrical inspector at electricalprogram@lni.wa.gov. Requests must include:

(a) Name of the person making the request and title;

(b) Contractor business name;

(c) Contractor license number;

(d) Job site or project name;

(e) Job site address;

(f) Business name of the end user customer; and

(g) A statement from the requestor acknowledging they know their approval to employ temporary electricians on a job site is invalid if they fail to employ at least fifty Washington certified **(01)** general journey level electricians there.

(8) At each job site where a contractor employs temporary electricians, contractors must maintain a conspicuously posted copy of the letter from the chief electrical inspector approving them to do so.

(9) Fourteen days after approval to employ temporary electricians at a job site, and every fourteen days thereafter, a status report for the job site is due at the office of the chief electrical inspector at electricalprogram@lni.wa.gov. The report must include:

(a) The submitter's business name;

(b) The submitter's electrical contractor license number;

(c) The job site name and address;

(d) Current number of Washington certified journey level electricians under their employ at the job site; and

(e) Each temporary electrician's name, date of hire, date of termination (if applicable), permit number, and permit expiration date.

The job site status report must be conspicuously posted at the job site.

Reciprocal agreements between Washington and other states.

(10) The department may negotiate reciprocal agreements with states that have equivalent requirements for certification of journey level or specialty electricians. These agreements allow electricians from those reciprocal states to become certified in the state of Washington without examination and allow Washington certified electricians to become certified in the other states without taking competency examinations. An individual may only apply for reciprocity from another state(s) one time in Washington.

(11) An individual will be issued a reciprocal electrician certificate of competency if all the following conditions are met:

(a) The department has a valid reciprocal agreement with the other state in the journey level or specialty category requested;

(b) The individual makes a complete application for a reciprocal certificate on the form provided by the department. A complete application includes:

(i) Application for reciprocal certificate of competency;

(ii) Evidence that the individual meets the eligibility requirements listed in RCW 19.28.191, by presenting a current, valid journey person or specialty electrician certificate or certified letter from the issuing state attesting to possession of such certificate by the applicant; and

(A) Evidence from an apprenticeship training director that any journey level category applicant has successfully completed an apprenticeship program that is equivalent to an apprenticeship program approved under chapter 49.04 RCW approved by the department for the electrical construction trade in which the applicant worked in the electrical construction trade for a minimum of eight thousand hours; or

(B) Evidence that any journey level category applicant has worked in the electrical construction trade for a minimum of sixteen thousand hours; and

(iii) All appropriate fees as listed in WAC 296-46B-909; and

(c) The individual obtained the reciprocal state's certificate of competency as a journey level or specialty electrician by examination and the individual held the reciprocal state's certificate for a period of at least one year.

(12) An individual is not eligible for a reciprocal electrician certificate of competency if the individual:

(a) Has failed to renew a similar Washington electrician certificate of competency as required in RCW 19.28.211;

(b) Has a similar Washington electrician certificate of competency in suspended, revoked, or inactive status under this chapter;

(c) Owes money as a result of an outstanding final judgment(s) to the department;

(d) Has ever taken and failed a Washington exam for the certificate being applied for; or

(e) Was a resident of the state of Washington at the time the examination was taken in the other state.

(13) The application fee for a reciprocal electrician certificate is ninety dollars (includes original certificate and application processing fee) (thirty-four dollars and seventy cents is nonrefundable after application is submitted).