

WSR 06-14-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-147—Filed June 21, 2006, 2:48 p.m., effective June 21, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900S and 232-28-61900V; and
 amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 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: Most of the spring chinook broodstock trapped to date at the Leavenworth National Fish Hatchery were stolen on the night of June 9, 2006. Additional fish needed to be trapped to replace those stolen. The hatchery has accomplished this task; to date more than 1,000 fish have been captured. The remaining fish returning to the Icicle River are available for harvest. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2006.

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Icicle River (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through July 31, 2006 it is lawful to fish for salmon in those waters of the Icicle River from 500 feet downstream of the Leavenworth National Fish Hatchery Rack downstream to a point 400 feet upstream of the mouth of the Icicle River. Daily limit two salmon, minimum size is 12 inches. Night closure and non-buoyant lure restrictions in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900S Exceptions to statewide rules—Icicle River (Chelan Co.) (06-144)

The following section of the Washington Administrative Code is repealed effective August 1, 2006:

WAC 232-28-61900V Exceptions to statewide rules—Icicle River (Chelan Co.)

WSR 06-14-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-146—Filed June 23, 2006, 9:54 a.m., effective June 24, 2006, 4:00 a.m.]

Effective Date of Rule: June 24, 2006, 4:00 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900U; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 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: Reiter Ponds Hatchery has collected enough steelhead brood stock to meet egg take goals. The early opening of the closed area will provide additional recreational opportunities. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 22, 2006.

J. P. Koenings

Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Skykomish Rearing Ponds (Reiter Ponds) (Skykomish Co.) Notwithstanding the provisions of WAC 232-28-619, effective 4:00 a.m. June 24 through July 31, 2006 it is lawful to fish for and possess gamefish in those waters of the Skykomish River in the Skykomish Rearing Ponds (Reiter Ponds) area from 1500 feet upstream to 1000 feet downstream of the ponds outlet. Fishing from a floating device is prohibited. Night closure and non-buoyant lure restriction in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2006:

WAC 232-28-61900U	Exceptions to statewide rules—Skykomish Rearing Ponds (Reiter Ponds) (Skykomish Co.)
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**WSR 06-14-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-149—Filed June 23, 2006, 3:51 p.m., effective June 23, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100K; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 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 2006 state/tribal Puget Sound shrimp harvest management plans requires adoption of harvest seasons contained in this emergency rule. Commercial spot shrimp quotas are available in the areas opened under this rule. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 23, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-05100L Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, Crustacean Management Regions 2, 3, 4 and 6 outside the shrimp districts are open to the harvest of all shrimp species immediately until further notice, except as provided for in this section:

i) It is unlawful to harvest shrimp for commercial purposes in Marine Fish/Shellfish Management and Catch Reporting Areas 26D and 23A-C.

ii) Marine Fish/Shellfish Management and Catch Reporting Area 25D (Port Townsend Bay) is open to the harvest of shrimp species other than spot shrimp, except those waters south of the 48.06' North latitude line, north of the 48.04' North latitude line and east of the 122.46' west longitude line are closed.

(b) The shrimp trip limit accounting week is Monday through Sunday.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 200 pounds in Catch Area 23A-E

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Regions 2, 4 and 6, except, any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29, shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks

(e) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information.

(i) The number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 22A within Shrimp Management Area 1B is open immediately, until further notice

(b) Shrimp Management Area 3 outside of the shrimp districts is open immediately until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100K Puget Sound shrimp beam trawl fishery—Season (06-137)

**WSR 06-14-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-145—Filed June 26, 2006, 2:07 p.m., effective July 16, 2006]

Effective Date of Rule: July 16, 2006.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 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 necessary to avoid harvest of soft-shelled Dungeness crab. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 26, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-52-04600R Crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful for non-Indian commercial fisheries to fish for or possess crab for commercial purposes, or place gear, in the following areas during the periods indicated:

(1) It is unlawful to place gear, fish for or possess Dungeness crab for commercial purposes in the following areas from July 16 through September 15, 2006: Those waters west of straight lines drawn in sequence from south to north between the following coordinates:

Land description	Coordinate
(a) Washington - Oregon border	46°15.00'N 124°10.00'W
(b) Seaview	46°20.00'N 124°10.00'W
(c) Willapa Bay entrance	46°40.00'N 124°10.00'W
(d) N. Willapa Bay Spits	46°43.50'N 124°11.50'W
(e) Grayland	46°50.00'N 124°12.30'W
(f) Grays Harbor	46°54.70'N 124°16.00'W
(g) Ocean Shores	47°00.00'N 124°16.00'W
(h) Moclips	47°15.00'N 124°19.00'W
(i) Cape Elizabeth	47°20.00'N 124°25.00'W
(j) Raft River	47°27.00'N 124°28.60'W (follow TD 41880 to way-point # 11 N. Destruction Island)
(k) N. Destruction Island	47°42.40'N 124°31.50'W
(l) Lapush	47°55.00'N 124°46.00'W
(m) Carol Island	48°00.00'N 124°49.50'W
(n) N. Lake Ozette	48°07.60'N 124°51.40'W
(o) Makah Bay	48°20.00'N 124°50.00'W
(p) Cape Flattery	Point on land

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

REPEALER

The following section of the Washington Administrative Code is repealed effective September 16, 2006:

WAC 220-52-04600R Crab fishery—Seasons and areas.

WSR 06-14-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-148—Filed June 26, 2006, 2:07 p.m., effective June 27, 2006, 6:00 a.m.]

Effective Date of Rule: June 27, 2006, 6:00 a.m.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100W; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 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: Sets second week of treaty Indian summer commercial gill net fishery for Zone 6. Continues to allow the sale of fish caught in platform and hook and line fishery in Zone 6. Also allows the sale of fish caught in Yakama Nation tributary fisheries to be sold when those tributaries are open under Yakama Nation rules. Harvestable numbers of salmon and steelhead are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2005-2007 management agreement. Rule is consistent with action of the Columbia River compact on June 7, 2006, and June 23, 2006. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

Date Adopted: June 26, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, and the Wind River, White Salmon River, Klickitat River, and Drano Lake except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Open Periods: 6:00 a.m. June 27 until 6:00 p.m. June 29

6:00 a.m. July 5 until 6:00 p.m. July 7

a) Open Areas: SMCRA 1F, 1G, 1H,

b) Gear: 7 inch minimum mesh size restriction

2. Open Periods: immediately until further notice

a) Open Areas: SMCRA 1F, 1G, 1H,

b) Gear: hoop nets, dip bag nets, and rod and reel with hook and line.

3. Open Periods: immediately until further notice and only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation tribal subsistence fisheries, for enrolled Yakama Nation members.

a) Open Areas: White Salmon and Klickitat rivers

b) Gear: hoop nets, dip bag nets, and rod and reel with hook and line.

4. Allowable sale includes: salmon, steelhead, walleye, shad, and carp. Sockeye may be retained but not sold. Sturgeon between 45 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only. Fish may also be sold from Washington tributaries during the open Yakama Nation fishing periods within those areas, as described above.

Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

5) There will be no sanctuary in effect at Spring Creek National Fish Hatchery.

6) Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is

located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

f) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

7) Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a. Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b. Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c. Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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 6:00 a.m. June 27, 2006:

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. (06-142)

WSR 06-14-029 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-150—Filed June 27, 2006, 3:04 p.m., effective June 27, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000A and 220-52-03000B; and amending WAC 220-52-030.

Statutory Authority for Adoption: RCW 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 are adequate clams to support an extension to the commercial razor clam season. Biotoxin levels currently fall below the regulatory threshold. Agreements with department of natural resources requires this consistency on accessible areas. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 26, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-03000B Commercial razor clams. Notwithstanding the provisions of WAC 220-52-030, effective immediately through July 14, 2006, it is lawful to dig for and possess razor clams for commercial purposes only in those

waters and *detached* beaches of Razor Clam Area 1 lying south of the Willapa Bay Ship Channel, west of Ellen Sands and north of the tip of Leadbetter point; and in those waters and attached beaches north of the line of boundary markers consisting of five white posts near the northern tip of Leadbetter Point; all other areas remain closed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-03000A Commercial razor clams.
(06-93)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 15, 2006:

WAC 220-52-03000B Commercial razor clams.

WSR 06-14-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-152—Filed June 27, 2006, 4:53 p.m., effective June 27, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-48-02900G; and amending WAC 220-48-029.

Statutory Authority for Adoption: RCW 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: Permanent rules closed Puget Sound to set net fishing on June 16. There is a harvest surplus of dogfish available and this rule is needed to provide an opportunity to harvest these fish. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-48-02900G Set net—Dogfish seasons. (1) Notwithstanding the provisions of WAC 220-48-029, effective immediately it is unlawful to take, fish for and possess dogfish and other species of bottomfish taken with dogfish set net gear for commercial purposes in the following Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas except during the seasons designated below:

(a) Areas 23C and 23D - June 27 through September 15.

(b) Areas 24A, 24B, and 24D June 27 through September 15.

(c) Area 24C - June 27 through September 15, except those waters south of line Projected due east of East Point on Whidbey Island are closed.

(d) Areas 25A, 25B and that portion of Area 25C west of a line from Twin Spits to the Port Gamble Millstack - June 27 through September 15.

(e) Area 26A - June 27-September 15, except those waters southerly and westerly of a line between the ferry dock at Mukilteo and the ferry dock at Clinton are closed.

(f) Area 26B - June 27 through September 15, except those waters provided for in WAC 220-20-020(4) (Shilshole Bay) are closed. Those waters west of a line projected 178 degrees true from the end of the Indianola dock to the landfall on the south shore of Port Madison are closed.

(g) Area 26C - Open until further notice, except those waters north of a line projected true east of Point Bolin and those waters west of a line projected 178 degrees true from the end of the Indianola dock to the landfall on the south shore of Port Madison are closed.

(h) Area 26D - June 27 through September 15, except Quartermaster Harbor and those waters south of lines projected from Dash Point to Point Piner on Maury Island and from Point Dalco true west to the Kitsap Peninsula are closed.

(i) Area 28A - June 27 through September 15, except those waters north of a line projected true east of Fox Point on Fox Island, and east of a line projected due north from the northwest tip of Fox Island are closed.

(j) Areas 28B, 28C, and 28D - June 27 through September 15, except those waters provided for in WAC 220-20-010(6) (upper Carr Inlet).

(2) Incidental catch: It is unlawful to retain any shellfish or fish other than bottomfish.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 16, 2006:

WAC 220-48-02900G Set net—Dogfish seasons.

WSR 06-14-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-151—Filed June 27, 2006, 4:55 p.m., effective July 1, 2006]

Effective Date of Rule: July 1, 2006.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900H and 232-28-61900Y; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 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 Klickitat Salmon Hatchery is expected to reach its escapement goal of spring chinook, making more hatchery adult salmon available for recreational harvest. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2006.

J. P. Koenings
 Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Klickitat River. Notwithstanding the provisions of WAC 232-28-619, effective July 1 through July 31, 2006, in those waters of the Klickitat River from 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon Hatchery, open 7 days a week. Daily limit of six salmon no more than 2 adults. Trout daily limit is 2 fish. Release all wild Chinook and wild steelhead. Minimum size is 12 inches for both salmon and trout.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2006:

WAC 232-28-61900H	Exceptions to statewide rules—Klickitat River, Drano Lake, White Salmon River and Wind River. (06-121)
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The following section of the Washington Administrative Code is repealed effective August 1, 2006:

WAC 232-28-61900Y	Exceptions to statewide rules—Klickitat River.
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WSR 06-14-038
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed June 28, 2006, 9:30 a.m., effective July 1, 2006]

Effective Date of Rule: July 1, 2006.

Purpose: Amending WAC 388-515-1550 to increase the personal needs allowance (PNA) from an amount equal to the one-person medically needy income level (MNIL) to the one-person federal poverty level (PNA) per order of the United States Ninth Circuit Court of Appeals in Number 01-35689.

Citation of Existing Rules Affected by this Order: Amending WAC 388-515-1550.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.520, and 74.09.530.

Other Authority: Section 206 (6)(b), chapter 276, Laws of 2006 and *Townsend vs. Quasim (DSHS)*, U.S. District Court, Western District of Washington, No. CV-00-00944 TSZ.

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: (1) No person will be adversely affected by the adoption of the rule amendment, and thus no public comment is reasonably likely; (2) the proposed rule amendment will benefit current participants in the medically needy in-home waiver program, and immediate adoption will allow the participants to enjoy a benefit at an earlier date than would be the case if the effective date of implementation were deferred until the regular rule-making process is complete; and (3) the failure to implement this rule on an expedited basis may jeopardize the department's legal position in pending litigation.

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

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

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

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

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

Date Adopted: June 27, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-515-1550 Medically needy in-home waiver (MNIW) effective May 1, 2004. This section describes the financial eligibility requirements for waiver services under the medically needy in-home waiver (MNIW) and the rules used to determine a client's responsibility in the total cost of care.

- (1) To be eligible for MNIW, a client must:
 - (a) Not meet financial eligibility for Medicaid personal care or the COPES program;
 - (b) Be eighteen years of age or older;
 - (c) Meet the SSI-related criteria described in WAC 388-475-0050(1);
 - (d) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;
 - (e) In the absence of waiver services described in WAC 388-106-0500, continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;
 - (f) Have attained institutional status as described in WAC 388-513-1320;
 - (g) Have been determined to be in need of waiver services as described in WAC 388-106-0510;
 - (h) Be able to live at home with community support services and choose to remain at home;
 - (i) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and
 - (j) Meet the resource and income requirements described in subsections (2) through (6) of this section.
- (2) The department determines a client's nonexcluded resources under MNIW as described in WAC 388-513-1350 (1) through (4)(a) and 388-513-1360;
- (3) Nonexcluded resources, after disregarding excess resources described in subsection (4) of this section, must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spenddown liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNIW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except Medicare premiums, not used to reduce excess resources in subsection (4) of this section;

(e) Allows an income deduction for a nonapplying spouse, equal to the one person medically needy income level (MNIL) less the nonapplying spouse's income, if the nonapplying spouse is living in the same home as the applying person.

(6) A client whose countable income exceeds the MNIL may become eligible for MNIW:

(a) When they have or expect to have medical expenses to offset their income which is over the MNIL; and

(b) Subject to availability in WAC 388-106-0535.

(7) The portion of a client's countable income over the MNIL is called "excess income."

(8) A client who has or will have "excess income" is not eligible for MNIW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(9) The following medical expenses may be used to meet spenddown if not already used in subsection (4) of this section to disregard excess resources or to reduce countable income as described in subsection (5)(d) of this section:

(a) An amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) The cost of waiver services authorized during the base period.

(c) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spenddown liability;

(iii) Have not been used to reduce client responsibility toward cost of care; and

(iv) Are amounts for which the client remains liable.

(10) Eligibility for MNIW is effective the first full month the client has met spenddown.

(11) In cases where spenddown has been met, medical coverage and MNIW begin the day services are authorized.

(12) A client who meets the requirements for MNIW chooses a three or six month base period. The months must be consecutive calendar months.

(13) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) in an amount equal to the one-person (~~(MNL)~~) Federal Poverty Level (FPL) described in WAC (~~(388-478-0070(1)(a))~~) 388-478-0075(4);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in subsection (4) of this section not used to meet spenddown or reduce excess resources.

WSR 06-14-039

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

(Aging and Disability Services Administration)

[Filed June 28, 2006, 9:31 a.m., effective July 1, 2006]

Effective Date of Rule: July 1, 2006.

Purpose: The department is amending these rules:

- To increase the personal needs allowance (PNA) for clients residing in medical institutions to \$53.68 effective July 1, 2006.
- To increase the community spouse income and family allowance to \$1,650 per month effective July 1, 2006.
- To increase the community spouse housing allowance to \$495 per month effective July 1, 2006.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-513-1380.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Other Authority: 2005-07 revised omnibus operating budget (2006 supplement) DSHS (chapter 372, Laws of 2006).

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: Standards increase per 2005-07 revised omnibus operating budget (2006 supplement) DSHS (chapter 372, Laws of 2006) must be effective July 1, 2006. The federal increase in the spousal impoverishment standard must be effective July 1, 2006, in order to continue receiving federal funds.

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

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

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

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

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

Date Adopted: June 27, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-07-144, filed 3/21/06, effective 4/21/06)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (in the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the Medicaid special income level (SIL), if the client is not otherwise eligible for another noninstitutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

(4) Excess resources are reduced in an amount equal to medical expenses incurred by the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(c) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(5) The department allocates nonexcluded income in the following order and the combined total of (5)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving general assistance.

(iv) Effective July 1, ~~((2005)) 2006~~, ~~((fifty-one)) fifty-three~~ dollars and ~~((sixty-two)) sixty-eight~~ cents for all other clients in a medical institution.

(b) Federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(6) The department allocates nonexcluded income after deducting amounts described in subsection (5) in the following order:

(a) Income garnisheed for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2006, two thousand four hundred eighty-nine dollars, unless a greater amount is allocated as described in subsection (8) of this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, <http://www.bls.gov/cpi/>). The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand six hundred ~~((four)) fifty~~ dollars ~~((- effective April 1, 2005))~~. This standard is based on one hundred fifty percent of the two person federal poverty level and increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses as described under subsection (7) of this section; and

(ii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) In an amount equal to one-third of one thousand six hundred ~~((four)) fifty~~ dollars less the dependent family member's income. This standard is based on one hundred fifty percent of the two person federal poverty level and increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>). ~~((; and~~

~~(B) Is effective April 1, 2005.)~~

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from noncustodial parent is the child's income.

(d) Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources with the following exceptions:

(i) Private health insurance premiums for Medicare/Medicaid integration project (MMIP); and

(ii) Managed care health insurance premiums for program of all-inclusive care for the elderly (PACE).

(e) Maintenance of the home of a single client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents initial need for the income exemption.

(7) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (7)(b) less the standard shelter allocation under subsection (7)(a). For the purposes of this rule:

(a) The standard shelter allocation is four hundred ~~((eighty-one)) ninety-five~~ dollars ~~((- effective April 1, 2005))~~. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(8) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(9) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

WSR 06-14-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-153—Filed June 29, 2006, 9:19 a.m., effective June 29, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing regulations.

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

Statutory Authority for Adoption: RCW 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: Sets an additional fishing period for Week 27. TAC has upgraded the run to 70,000 summer chinook. Harvestable upper Columbia summer chinook and sturgeon are available. Season is consistent with the 2005-2007 interim management agreement and the 2003-2005 sturgeon fishery management plan. Regulation is consistent with compact action of January 26, 2006, and June 15, 2006. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 28, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-33-01000L Columbia River season below Bonneville. Notwithstanding the provision of WAC 220-33-010, and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

AREA: SMCRA 1A, 1B, 1C, 1D, and 1E

SEASON: 7:00 p.m. Thursday June 29 to 5:00 a.m. Friday June 30, 2006

7:00 p.m. Wednesday July 5 to 5:00 a.m. Thursday July 6, 2006

GEAR: 8-inch minimum mesh and 9-3/4 inch maximum mesh.

ALLOWABLE SALE: Chinook, coho, shad, and sturgeon. All sockeye and steelhead must be released immediately. A maximum of three sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

SANCTUARIES: Grays River, Elokomina-A, Cowlitz River, Kalama-A, Lewis-A, Washougal and Sandy Rivers.

OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000K Columbia River seasons below Bonneville. (06-141)

The following section of the Washington Administrative Code is repealed effective 5:01 a.m. July 6, 2006:

WAC 220-33-01000L Columbia River season below Bonneville.

WSR 06-14-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-154—Filed June 29, 2006, 9:20 a.m., effective June 29, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900N; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 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 cut-off date for retention of sturgeon was adopted because Washington and Oregon fish managers estimate that the harvest guideline of one hundred sixty-five fish will be achieved by July 1. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 28, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Columbia River (sturgeon). Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from the Dalles Dam upstream to John Day Dam.

(2) Effective 12:01 a.m. July 1, 2006 until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.

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 232-28-61900N Exceptions to statewide rules—Columbia River (sturgeon) (06-62)

WSR 06-14-060

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 30, 2006, 9:05 a.m., effective June 30, 2006]

Effective Date of Rule: Immediately.

Purpose: The purpose of the amended sections is to expand the population eligible to receive the state supplementary payment (SSP) to include certain individuals in residential settings; to clarify the amount of SSP certain individuals who were previously on traditional family support are eligible to receive; and to establish rules allowing one-time payments to certain individuals.

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

Statutory Authority for Adoption: RCW 71A.12.030, 74.04.057.

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: In order to receive federal funding for Title XIX Medicaid, the state is required to expend a certain amount of state supplementary payments (SSP) to meet a yearly maintenance of effort established by the federal Social Security Administration as specified in 20 C.F.R. 416.2099. By expanding the population eligible to receive SSP, clarifying the amount of SSP to certain individuals, and allowing the authorization of one-time payments, the state will achieve this maintenance of effort.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 29, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-10-039, filed 4/28/05, effective 5/29/05)

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? (1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you

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

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

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

(b) Family support;

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

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

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

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

(3) For new authorizations of family support opportunity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

AMENDATORY SECTION (Amending WSR 05-10-039, filed 4/28/05, effective 5/29/05)

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

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

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

(2) For family support services, refer to WAC 388-825-200 through 388-825-284.

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

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

(ii) The remainder up to the maximum allowed may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.

(i) Need is based on your Service Need Level and whether you receive Medicaid Personal Care as specified in WAC 388-825-254.

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

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

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

~~((a) For individuals whose initial CARE assessment was completed prior to January 1, 2005, January 2005 is the first month for which payment is made.~~

~~(b) For individuals whose initial CARE assessment is completed after December 31, 2004, the first month for which payment is made is the month in which the results of the initial CARE assessment are effective.))~~

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

WSR 06-14-065

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-155—Filed June 30, 2006, 10:22 a.m., effective July 5, 2006, 12:01 a.m.]

Effective Date of Rule: July 5, 2006, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-128.

Statutory Authority for Adoption: RCW 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 closure includes the area of an experiment with rockfish related to the conservation of rockfish stocks in Puget Sound. Any fishing induced mortality could invalidate the results of the experiment which is scheduled to start in early July. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 29, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-56-12800J Food fish fishing—Closed areas. Notwithstanding the provisions of WAC 220-56-128, effective 12:01 a.m. July 5, 2006 until further notice, it is unlawful to fish for bottomfish in those waters of Catch Record Card Area 11 within 500 yards of the radio tower at Point Heyer.

WSR 06-14-066 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-156—Filed June 30, 2006, 10:23 a.m., effective July 1, 2006, 12:01 a.m.]

Effective Date of Rule: July 1, 2006, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 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: Summer steelhead runs on the Cowlitz River and Lewis River are very strong and hatchery escapement goals will be met. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 29, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—Cowlitz River, North Fork Lewis River. Notwithstanding the provisions of WAC 232-28-619:

(1) Cowlitz River (Cowlitz County)

Effective July 1 until further notice, up to three hatchery steelhead may be retained as part of the trout daily limit in those waters of the Cowlitz River from the highway 4 Bridge at Kelso upstream to 400 feet or posted markers below the barrier dam.

(2) North Fork Lewis River (Clark County)

(a) Effective July 1 until further notice, up to three hatchery steelhead may be retained as part of the trout daily limit in those waters downstream of Colvin Creek to I-5 Bridge.

(b) Effective July 1 through September 30, 2006, up to three hatchery steelhead may be retained as part of the trout daily limit in those waters upstream of Colvin Creek to overhead power lines below Merwin Dam.

WSR 06-14-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-157—Filed June 30, 2006, 4:40 p.m., effective June 30, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100X; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 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: Adds additional time to the treaty fishery based on an upgraded run size of 93,000 summer chinook. Continues to allow the sale of fish caught in platform and hook and line fishery in Zone 6. Also allows the sale of fish caught in Yakama Nation tributary fisheries to be sold when those tributaries are open under Yakama Nation rules. Harvestable numbers of salmon and steelhead are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2005-2007 management agreement. Rule is consistent with action of the Columbia River compact on June 23, 2006, and June 30, 2006. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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 30, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-32-05100Y Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, 220-32-051, 220-32-052, 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, and the Wind River, White Salmon River, Klickitat River, and Drano Lake except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Open Periods: 6:00 a.m. July 3 until 6:00 p.m. July 7
 - a) Open Areas: SMCRA 1F, 1G, 1H,
 - b) Gear: Gillnets; 7 inch minimum mesh size restriction
2. Open Periods: immediately until further notice
 - a) Open Areas: SMCRA 1F, 1G, 1H,
 - b) Gear: hoop nets, dip bag nets, and rod and reel with hook and line.
3. Open Periods: immediately until further notice and only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation tribal subsistence fisheries, for enrolled Yakama Nation members.
 - a) Open Areas: White Salmon and Klickitat rivers
 - b) Gear: hoop nets, dip bag nets, and rod and reel with hook and line.
4. Allowable sale includes: salmon, steelhead, walleye, shad, and carp. Sockeye may be retained but not sold. Sturgeon between 45 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only. Fish may also be sold from Washington tributaries during the open Yakama Nation fishing periods within those areas, as described above.

Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

5) There will be no sanctuary in effect at Spring Creek National Fish Hatchery.

6) Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

f) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

7) Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a. Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b. Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c. Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. (06-148)

WSR 06-14-074 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-158—Filed June 30, 2006, 4:41 p.m., effective July 3, 2006, 9:00 p.m.]

Effective Date of Rule: July 3, 2006, 9:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100L; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 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 2006 state/tribal Puget Sound shrimp harvest management plans requires adoption of harvest seasons contained in this emergency rule. The commercial spot shrimp quota has been taken in the area closed under this rule. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 30, 2006.

Morris N. Barker
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-05100M Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provi-

sions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, Crustacean Management Regions 2, 3, 4 and 6 outside the shrimp districts are open to the harvest of all shrimp species immediately until further notice, except as provided for in this section:

i) It is unlawful to harvest shrimp for commercial purposes in Marine Fish/Shellfish Management and Catch Reporting Areas 23A-E, 26D and 23A-C.

ii) Marine Fish/Shellfish Management and Catch Reporting Area 25D (Port Townsend Bay) is open to the harvest of shrimp species other than spot shrimp, except those waters south of the 48.06' North latitude line, north of the 48.04' North latitude line and east of the 122.46' west longitude line are closed.

(b) The shrimp trip limit accounting week is Monday through Sunday.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Regions 2, 4 and 6, except, any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29, shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks

(d) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information.

(i) The number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(e) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 22A within Shrimp Management Area 1B is open immediately, until further notice

(b) Shrimp Management Area 3 outside of the shrimp districts is open immediately until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. July 3, 2006:

WAC 220-52-05100L Puget Sound shrimp beam trawl fishery—Season (06-149)

**WSR 06-14-084
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed July 3, 2006, 10:03 a.m., effective July 3, 2006]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to allow the new department of early learning to continue performing background clearances on and providing due process hearing procedures to child care providers after the department separated from the department of social and health services (DSHS) and became a new department on July 1, 2006. No rules are being appealed or amended, but obsolete DSHS rules about background checks and hearings are being replicated in new Title 170 WAC, which is the new department of early learning title.

Statutory Authority for Adoption: Section 301, chapter 265, Laws of 2006.

Other Authority: Chapter 265, Laws of 2006.

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: SSHB 2964 (chapter 265, Laws of 2006) created the new department of early learning, effective July 1, 2006. The department had existed in the past as division of child care and early learning, a part of DSHS. One function of the department is to perform background checks on applicants for child care licenses and workers in child care. These rules also set up a process for hearings in those instances when an applicant for a child care license is denied the license or denied clearance to work with children. With the creation of the department of early learning, child care background check and hearing rules DSHS rules in Title 388 WAC became obsolete for the purpose of regulating child care. These new rules are needed to allow the new department of early learning to continue the business of performing background checks and conducting hearings. This is vital to the health and safety of children in care. These rules are necessary to implement the legislature's intent in SSHB 2964.

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 72, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 72, Amended 0, Repealed 0.

Date Adopted: July 3, 2006.

Carla Gira

Interim Rules Coordinator

Chapter 170-03 WAC

DEL HEARING RULES

I. GENERAL PROVISIONS

NEW SECTION

WAC 170-03-0010 Purpose and scope. (1) **Application.** This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of early learning (DEL) and:

- Individuals or entities who are applicants for child care licenses or who are licensees of DEL and are adversely affected by a decision of DEL;
- Applicants for employment or employees of licensed child care agencies, child care providers, staff, volunteers, contracted providers, or other individuals who are required to meet background check standards before being authorized to care for or have unsupervised access to children in child care and who are disqualified by DEL;

Individuals receiving child care subsidies or on whose behalf child care subsidies are paid under the seasonal child care program who are assessed an overpayment and who dispute the overpayment.

(2) **Relation to statutes and rules.** The rules of this chapter are intended to supplement RCW 43.20A.205 and its DEL successor, the statute governing hearing rights for licensees, section 311, chapter 265, Laws of 2006, the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH). If a provision of this chapter conflicts with a provision in any chapter containing a substantive rule, the provision in the chapter containing the substantive rule governs.

(3) **Relation to actions and rules of other agencies.** Actions of DEL sometimes rely in part on actions taken by other agencies, most notably the department of social and

health services (DSHS), or are taken in conjunction with the actions of other agencies. For example, DSHS's division of licensed resources/child protective services (DLR/CPS) has statutory responsibility for investigating allegations of child abuse or neglect in licensed child care agencies. If DLR/CPS finds child abuse or neglect occurred in a child care facility, the person who is the subject of the finding will have a right to a hearing to challenge that finding under DSHS rules. If the subject is a licensed provider, the child care license may be revoked as a result of the circumstances and finding and the provider also would have a right to a hearing under DEL hearing rules. To the extent the child abuse or neglect case and the licensing case can be consolidated or combined in one hearing, they should be combined.

(4) **Application and amendments.** This chapter and any amendment to this chapter applies to cases pending at the time of the adoption of the rule or amendment, unless the amendment or rule-making order specifically states that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone in order to comply with the amendment, unless the amendment expressly says so.

Effective date: This chapter is effective July 3, 2006. In addition to cases arising on or after the effective date, this chapter applies to all pending DEL cases that have not gone to a full hearing before an ALJ by July 3, 2006, and to cases in which an initial decision is subject to review, but in which a petition for review has not been filed by July 3, 2006. This chapter does not apply to cases in which the hearing was held or begun prior to July 3, 2006, and/or which are awaiting initial decisions; Provided, Parts VIII and IX of this chapter, governing review of initial decisions, will apply to review of any initial decision mailed after the effective date of this chapter.

NEW SECTION

WAC 170-03-0020 Definitions. The following definitions apply to this chapter:

(1) **"Administrative law judge (ALJ)"** means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DEL employees or DEL representatives.

(2) **"Business days"** means all days except Saturdays, Sundays and legal holidays.

(3) **"Calendar days"** means all days including Saturdays, Sundays and legal holidays.

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

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

(6) **"DEL" or "department"** means the department of early learning.

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

(8) **"Ex parte contact"** means a written or oral communication with a judge about something related to the hearing when the 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.

(9) "**Final order**" means an order that is the final DEL decision.

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

(11) "**Hearing**" means a proceeding before OAH that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DEL. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 170 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

(12) "**Initial decision**" is a decision made by an ALJ that may be reviewed by a review judge.

(13) "**OAH**" means the office of administrative hearings.

(14) "**Party**" means a person or entity to whom a DEL action is directed that has a right to be involved in the hearing process. DEL also is a party, but is referred to in this chapter as DEL or the department.

(15) "**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 administrative hearings. "**DEL representative**" means an employee of DEL, a DEL contractor, or an employee of the office of the attorney general authorized to represent DEL in an administrative hearing.

(16) "**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.

(17) "**Review**" means the act of reviewing initial orders and making the final agency decision as provided by RCW 34.05.464.

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

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

(20) "**Stay**" means an order temporarily halting the DEL decision or action.

(21) "**Words of command**" such as "should," "shall," and "must" are words that impose a mandatory obligation on a participant in the hearing process. The words "may" or "will" are used when referring to a discretionary act to be taken by an ALJ or review judge.

NEW SECTION

WAC 170-03-0030 Computing time for meeting deadlines in the hearing process. (1) When counting days to find out 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 a hearing decision 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 legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days. For example, if you have seven days to respond to a review request that was mailed to you on Friday, May 10, the response period ends on Tuesday, May 21.

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

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

II. HEARING RIGHTS AND REQUESTS

NEW SECTION

WAC 170-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing only if a law or DEL rule expressly gives that right and a hearing is timely requested.

(2) A party has only a limited time to request a hearing. The deadline for the request is set by statute or DEL rule. In most cases, DEL will send a notice of adverse action or disqualification that gives specific information about how, where and when to request a hearing.

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

(4) If a party requests a hearing, one will be scheduled.

(5) If DEL 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 170-03-0050 Requesting a hearing. (1) A request for hearing must be made in writing. It can be made by the party requesting the hearing or the party's representative.

(2) The hearing request should include:

(a) The requesting party's name, address, and telephone number;

(b) A brief explanation of why the requesting party disagrees with the DEL action;

(c) Any assistance, such as a foreign or sign language interpreter or accommodation for a disability, needed by the requesting party;

(d) A copy of the notice from DEL stating the adverse action.

(3) The request should be filed with OAH and served on DEL.

NEW SECTION**WAC 170-03-0060 Filing the request for hearing.** (1)

Filing is the act of delivering documents to OAH at the location listed in WAC 170-03-0070.

(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 e-mail.

NEW SECTION

WAC 170-03-0070 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 legal holidays.

(2) The address for the office of administrative hearings (OAH) is:

Office of Administrative Hearings
2420 Bristol Court S.W., 1st Floor
P.O. Box 42488
Olympia, WA 98504-2488
360-664-8717
360-664-8721 (fax)

Requests for hearing should be sent to the attention of Barb Cleveland, Executive Assistant.

NEW SECTION**WAC 170-03-0080 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 hearing or other action. When a document is given to a party, that party is considered served with official notice of the contents of the document.

(2) 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 e-mail.

(4) A party must serve all other parties or a party's representative, if the party is represented, whenever the party files a pleading (request for hearing), brief or other document with OAH or the review judge or when required by law.

(5) 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 170-03-0090 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 170-03-0100 Representation during the hearing process. (1) The party requesting the hearing may represent himself or herself or may have another person, except a DEL employee, act as the representative.

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

(3) The representative should 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 representative is not an attorney, the party must provide a written statement to DEL authorizing the release of information about the party to the representative.

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

III. INTERPRETER SERVICESNEW SECTION

WAC 170-03-0110 The right to an interpreter in the hearing process. (1) If a party has limited English proficiency (LEP), OAH will provide an interpreter.

(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 170-03-0120 Definitions. The following definitions apply to rules relating to interpreter services.

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

(2) "**Limited English proficient (LEP)**" includes limited English-speaking persons or other persons unable to

communicate in spoken English because of a hearing impairment.

(3) "**Limited English-speaking (LES) person**" means a person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

NEW SECTION

WAC 170-03-0130 Interpreter qualifications. (1) OAH must provide a qualified interpreter to assist any person who:

- (a) Has limited English proficiency; and
- (b) 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 DEL 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 interpreter does not provide accurate and effective communication, the ALJ must provide another interpreter.

NEW SECTION

WAC 170-03-0140 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 170-03-0150 Requirements that apply to the use of interpreters. (1) Interpreters must:

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

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

(c) Not disclose information about the hearing without the written consent of the parties; 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 170-03-0160 Requirements that apply to decisions involving limited English-speaking parties. (1) When an interpreter is used at a hearing, the ALJ must explain that the decision will be written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost.

(2) Interpreters must provide a telephone number where they can be reached to the ALJ and to the LES party. This number must be included in any decision or order mailed to the parties.

(3) OAH or the review judge must mail a copy of a decision or order to the interpreter for use in oral translation.

IV. PREHEARING PROCEDURES

NEW SECTION

WAC 170-03-0170 Notice of hearing. (1) When a hearing is requested, OAH sends the parties a written notice of the hearing or prehearing conference.

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

(a) The names of all parties who receive the notice and, if known, the names and addresses of their representatives;

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

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

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

(e) The date of the hearing request.

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

(a) If a party fails 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 needs a qualified interpreter because the appealing party or any witness has limited English proficiency, OAH will provide an interpreter at no cost.

(c) If the hearing 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.

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

NEW SECTION

WAC 170-03-0180 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 or a party may request a prehearing conference, but the ALJ decides whether to hold a prehearing conference. OAH sends notice of the time and date of the conference to all parties.

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

(4) Attendance of the parties and their representatives is mandatory. A party may lose the right to participate during the hearing if that party does not attend the prehearing conference.

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

NEW SECTION

WAC 170-03-0190 Purposes of prehearing conference. (1) The purposes of the prehearing conference 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 the DEL 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 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 DEL rule;

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

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

NEW SECTION

WAC 170-03-0200 Prehearing order. (1) After the conference ends, the ALJ will send a prehearing order describing:

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

(b) Any changes to DEL'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.

NEW SECTION

WAC 170-03-0210 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 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 or statement that a party does not believe that the ALJ can hear the case fairly.

(c) The party must send the request to 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 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 review judge be disqualified under RCW 34.05.425, for bias, prejudice, conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or 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 review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest or an ex parte contact.

(b) A party must send or deliver the petition to the 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 review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

V. LAWS APPLIED IN ADMINISTRATIVE HEARINGS

NEW SECTION

WAC 170-03-0220 Rules an ALJ or review judge must apply when making a decision. (1) ALJs and the review judge must first apply the DEL rules adopted in the Washington Administrative Code.

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

NEW SECTION

WAC 170-03-0230 Challenges to validity of DEL rules. (1) Neither an ALJ nor a review judge may decide that a DEL rule is invalid or unenforceable. Only a court may decide this issue.

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

NEW SECTION

WAC 170-03-0240 Amendment to DEL notice or party's request for hearing. (1) The ALJ must allow DEL to amend (change) the notice of a DEL action before or during the hearing to match the evidence and facts.

(2) If DEL 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 DEL notice.

(4) If there is an amendment to either the DEL notice or the appealing party's request for 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 DEL 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 170-03-0250 Change of address. (1) A party must tell DEL and OAH, as soon as possible, when the party's mailing address or telephone number changes.

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

NEW SECTION

WAC 170-03-0260 Continuances. (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party should 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 continuance.

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

NEW SECTION

WAC 170-03-0270 Order of dismissal. (1) An order of dismissal is an order sent by the ALJ to end the hearing. The order is made by agreement of the parties, or because the

party who requested the hearing withdrew the request, failed to appear, or refused to participate.

(2) If a hearing is dismissed because the appealing party did not appear or refused to participate, the DEL decision stands.

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

NEW SECTION

WAC 170-03-0280 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 DEL 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.

NEW SECTION

WAC 170-03-0290 Stay of DEL action. (1) Except as set forth in WAC 170-03-0300, at any point in the proceeding before OAH or the review judge, the appealing party may request that an ALJ or review judge stay (stop) a DEL action until there is a decision entered by the ALJ or review judge.

(2) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause the ALJ must determine:

(a) The party requesting the stay is likely to prevail in the hearing on the merits;

(b) The party requesting the stay will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances of the case.

NEW SECTION

WAC 170-03-0300 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a license issued under chapter 265, Laws of 2006 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) A licensee who contests suspension of a license by the department may obtain a stay of the effectiveness of that order only as set forth in this section.

(3) The licensee may request a stay by including such a request in the request for hearing or in a subsequent motion. The request 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.

(4) Upon receipt of a request for a stay, the ALJ will schedule a hearing on the request. The hearing may be combined with a prehearing conference. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the ALJ may advance the hearing date on its own initiative or by request of the parties.

(5) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or 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 licensing action;

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

(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.

(6) Economic hardship of itself shall be an insufficient reason for a stay of a suspension of a license.

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

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

(9) A request for review by the review judge shall be promptly determined. The decision on the request for review by the review judge shall not be subject to judicial review.

VI. HEARINGS

NEW SECTION

WAC 170-03-0340 Conduct of hearings. (1) Hearings may be held in person or by telephone conference or other electronic means.

(2) All parties, their representatives and witnesses may attend the hearing in person or by telephone conference or other electronic means at the discretion of the ALJ.

(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 170-03-0350 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, provided that the ALJ's authority shall be limited to determining whether the sanction imposed or action taken by the department was warranted and/or justified under the evidence presented during the hearing. The ALJ shall 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 receive 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 and/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 DEL 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 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:

(a) The waiver is necessary to avoid manifest injustice to the unrepresented party; and

(b) That the waiver would not prejudice any other party.

(5) The ALJ shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

NEW SECTION

WAC 170-03-0360 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) Ensures that a record is made;
- (d) Explains that a decision is mailed after the hearing;

and

- (e) 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) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

NEW SECTION

WAC 170-03-0390 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the ALJ.

(5) The ALJ may only consider admitted evidence to decide a case.

NEW SECTION

WAC 170-03-0400 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. The ALJ may only base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.

(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) Except in cases 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 shall not be admissible. In cases where such evidence is admissible, the ALJ shall 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 170-03-0410 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 has discretion to strike all testimony previously given by that witness on the proceeding.

NEW SECTION

WAC 170-03-0420 Stipulations. (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

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

NEW SECTION

WAC 170-03-0430 Exhibits. (1) Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

(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 170-03-0440 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 170-03-0450 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 DEL representative;

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

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

(5) Unless DEL agrees, a current or former DEL employee may not be an expert witness against DEL if that employee was actively involved in the case while working for DEL.

NEW SECTION

WAC 170-03-0460 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, DEL, 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 170-03-0470 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 including:

(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 170-03-0480 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;

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

(d) May be subpoenaed and ordered to appear according to WAC 170-03-0460.

(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, and not the party, may question the witness.

(4) The ALJ may also question witnesses.

NEW SECTION

WAC 170-03-0490 Burden 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 the rules or 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 170-03-0500 Equitable estoppel. (1) Equitable estoppel is a legal doctrine defined in case law that may prevent DEL from taking some action against a party in a proceeding to challenge an overpayment notice issued by DEL.

(2) There are five elements of equitable estoppel that must be proved by clear and convincing evidence. All of the following elements must be proved:

(a) DEL 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 DEL's original statement, action or failure to act.

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

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

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

(3) If the ALJ concludes that all of the elements of equitable estoppel in subsection (2) of this section have been proved with clear and convincing evidence, DEL is stopped

or prevented from taking action or enforcing its claim for repayment of the overpayment.

NEW SECTION

WAC 170-03-0510 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 send in evidence or argument; or
- (2) After the deadline for sending in evidence or argument is over.

VII. INITIAL DECISION

NEW SECTION

WAC 170-03-0520 Timing of the ALJ's decision. (1) After the record is closed, the ALJ must write a hearing decision and send copies to the parties.

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

NEW SECTION

WAC 170-03-0530 Contents of the initial decision. The ALJ initial decision must:

- (1) Identify the hearing decision as a DEL 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 changes in the decision and the deadlines for requesting them;
- (10) State the date the decision becomes final; and
- (11) Include any other information required by law or DEL program rules.

NEW SECTION

WAC 170-03-0540 Finality of initial decision. If no one requests review of the initial order or if a review request is dismissed, the initial decision becomes the final decision of DEL twenty-one calendar days after the date it is mailed to the parties by OAH.

NEW SECTION

WAC 170-03-0550 Challenges to the initial decision. (1) If a party disagrees with an ALJ's initial decision because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 170-03-0560.

(2) If a party disagrees with the reasoning and result of an initial decision and wants it changed, the party must request review by the review judge as provided in WAC 170-03-0570 through 170-03-0620.

NEW SECTION

WAC 170-03-0560 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 error are:

- (a) Missing or incorrect words or numbers;
 - (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or
 - (c) Math errors when adding the total of an overpayment.
- (2) 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) Requesting a corrected initial order for a case does not extend the deadline to request review of the initial decision by the review judge.

If a party wants to stay the DEL action until review of the initial order is completed, the party must request a stay from the review judge.

VIII. REVIEW

NEW SECTION

WAC 170-03-0570 Appeal of the initial decision. (1) Review or appeal of the initial decision may occur when a party disagrees or wants a change in an initial order, other than correcting a clerical error.

(2) A party must request review of an initial order from the DEL review judge as provided in WAC 170-03-0580 through 170-03-0640.

(3) If more than one party requests review, each request must meet the deadlines in WAC 170-03-0580.

(4) The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed.

(5) Review does not include another hearing by the DEL review judge.

NEW SECTION**WAC 170-03-0580 Time for requesting review.** (1)

The review judge must receive the written petition for review on or before the twenty-first calendar day after the initial order was mailed.

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

- (a) Asks for more time before the deadline expires; and
- (b) Shows good cause for requesting more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The review judge 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.

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

NEW SECTION

WAC 170-03-0590 Petition for review. (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) Evidence supporting the party's position.

(2) The petition for review must be filed with the review judge and a copy sent to the other parties and their representatives.

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

Review Judge
Department of Early Learning
P.O. Box 45480
Olympia, WA 98504-5480
360-725-4665

(4) After receiving a party's review request, the review judge will send a copy to the other parties, their representatives and OAH.

NEW SECTION**WAC 170-03-0600 Response to petition for review.**

(1) A party does not have to respond to the review request. A response is optional.

(2) If a party responds, that party must send the response so that the review judge 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 review judge.

(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 review judge by the deadline in subsection (2) of this section and give a good reason.

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

NEW SECTION

WAC 170-03-0610 Decision process. (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to the review after the record is closed.

(3) The review judge only considers evidence given at the original hearing.

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

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

NEW SECTION**WAC 170-03-0620 Authority of the review judge.** (1)

The review judge has the same decision-making authority as an ALJ, but must consider the ALJ's opportunity to observe the witnesses.

(2) The review judge's decision is the final decision of the agency in the case.

IX. REVIEW OF THE FINAL DECISIONNEW SECTION

WAC 170-03-0630 Request for reconsideration. (1) If a party disagrees with the final decision issued by a review judge and wants it reconsidered, the party may ask the review judge to reconsider the decision because the party believes the review judge made a mistake.

(2) If a party asks for reconsideration of the final decision, the reconsideration process must be completed before judicial review is sought.

(3) A request for reconsideration must be made in writing and must clearly state the reasons why the party wants the final decision reconsidered.

(4) The review judge must receive the written reconsideration request on or before the tenth calendar day after the final decision was mailed by the review judge to the parties. The party requesting reconsideration must send a copy of the request to all parties or, if the parties are represented, to their representatives.

(5) If a reconsideration request is received by the review judge after the deadline, the final decision will not be reconsidered. However, the review judge may extend its deadline if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Gives a good reason for the extension.

(6) After receiving a reconsideration request, the review judge will send a copy to the other parties and representatives giving them time to respond.

(7) If a party does not request reconsideration or ask for an extension within the deadline, the final order may not be reconsidered and it becomes the final agency decision.

NEW SECTION

WAC 170-03-0640 Response to a request for reconsideration. (1) A party does not have to respond to a request. A response is optional.

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

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

(4) If a party needs more time to respond, OAH or the review judge may extend its deadline if the party gives a good reason within the deadline in subsection (2) of this section.

NEW SECTION

WAC 170-03-0650 Ruling on request for reconsideration. (1) After the review judge receives a reconsideration request, within twenty calendar days the review judge must either:

- (a) Write a reconsideration decision; or
- (b) Send all parties an order denying the request.

(2) If the review judge does not send a reconsideration decision or an order denying the request within twenty days of receipt of the reconsideration request, the request is denied.

(3) The review judge decision is final when the reconsideration decision is mailed or the date the reconsideration request is denied.

NEW SECTION

WAC 170-03-0660 Judicial review. (1) Judicial review is the process of appealing a final order to a court.

(2) Any party, except DEL, may appeal a final order by filing 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 OAH or the review judge mails the final decision in the case.

(3) RCW 34.05.510 through 34.05.598 contains further details of the judicial review process.

Chapter 170-06 WAC**DEL BACKGROUND CHECK RULES**NEW SECTION

WAC 170-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of early learning (DEL). The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or under DEL approval. Background checks are conducted to find and evaluate any history of criminal convictions, findings of abuse or neglect of children or other vulnerable persons, adverse licensing actions, or other information that raises concerns about an individual's character and suitability to care for or have unsupervised access to children in child care.

(2) This chapter applies to applicants for child care agency licenses, licensees, persons working in or living on the premises of a child care agency, and child care providers who are authorized by DEL to care for children. These rules apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to care for or to have unsupervised access to children after the effective date of this chapter.

(3) If any provision of this chapter conflicts with a provision relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(4) Effective date: These rules are effective July 3, 2006, and apply prospectively.

NEW SECTION

WAC 170-06-0020 Definitions. The following definitions apply to this chapter:

(1) **"Authorized"** or **"authorization"** means qualified by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(2) **"DEL"** or **"department"** means the department of early learning.

(3) **"Director's list"** means a list of crimes and civil adjudications, the commission of which disqualifies an individual from being authorized by DEL to care for or have unsupervised access to children in child care.

(4) **"Disqualified"** means DEL has determined that a person's background information prevents that person from being authorized by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(5) **"Unsupervised access"** means:

(a) An individual will or may have the opportunity to be alone with a child in care at any time for any length of time; and

(b) Neither the licensee, a qualified employee, nor a relative or guardian of the child is present.

NEW SECTION

WAC 170-06-0030 Reason for background checks. The department does background checks to help safeguard the health, safety and well-being of children in licensed child care agencies and in the care of DEL-approved providers. By doing background checks, the department reduces the risk of harm to children from caregivers who have been convicted of certain crimes or who have been found to have been a risk to children. The department's rules and state law require the evaluation of background information to determine the character, suitability and competence of persons who will care for or have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0040 Background inquiries. (1) At the time of application for a license or for authorization to care for or have unsupervised access to children in child care, a completed background check form and finger print card, if

required, must be submitted to the department for each person who will have unsupervised access to any child in care. This includes:

- (a) Each applicant for a license;
- (b) All staff of the licensed child care agency, whether they provide child care or not;
- (c) Assistants;
- (d) Volunteers;
- (e) Contracted providers; and
- (f) Each person living on the premises of a licensed facility who is sixteen years of age or older.

(2) Each person identified in this section must consent to and authorize the department to access his or her criminal history and any information contained in any records about the person that are maintained by the department of social and health services, including child protective services, adult protective services, the division of home and community services, the division of residential care services, and the division of licensed resources.

(3) When a licensee plans to add new staff, assistants, volunteers, or contracted providers, or when any person who is sixteen years old or older moves onto the premises, the licensee shall require each person to complete and submit to the licensee a criminal history and background check form that must be submitted to DEL for processing before the date of hire or the date the individual moves onto the premises, as applicable.

(4) A person who has not been formally authorized by DEL to care for or have unsupervised access to children in child care may not have unsupervised access to any child in care.

(5) The department will discuss the result of the criminal history and background check information with the licensee, when applicable.

NEW SECTION

WAC 170-06-0050 Department action following completion of background inquiry. After the department receives the background information it will:

(1) Compare the background information with convictions/actions posted on the DEL director's list of disqualifying convictions/actions. The complete list can be found on the DEL web site or by calling any DEL office.

(2) Review the background information using the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The crime will not be considered a conviction for the purposes of the department when it has been pardoned or a court of law acts to expunge, dismiss, or vacate the conviction record, or if an order of dismissal has been entered following a period of probation, suspension or deferral of sentence.

(e) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and shall include convictions or dispositions for crimes committed as either an adult or a juvenile. It shall also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(f) A person will not be authorized to have unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(g) A person who has a "founded" finding for child abuse or neglect will not be authorized to have unsupervised access to children during the administrative hearing and appeals process.

(3) Conduct a character, competence and suitability assessment of the applicant, licensee, staff member, assistant, volunteer, contacted provider, or anyone living on the premises of a child care facility, if the individual is not automatically disqualified by a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult, under the DEL director's list of disqualifying crimes and actions.

(4) Notify the licensee or child care provider whether or not the department is able to approve the applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility to care for or have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0060 Additional information the department may consider. (1) Upon request, the licensee or any person who requests authorization to care for or to have unsupervised access to any child in care must provide to the department any additional reports or information it requests to assess the person's character, suitability and competence to have unsupervised access to children in care. This additional information may include, but is not limited to:

- (a) Sexual deviancy evaluations;
- (b) Substance abuse evaluations;
- (c) Psychiatric evaluations; and
- (d) Medical evaluations.

Any evaluation requested under this section must be by a DEL-approved evaluator and will be at the expense of the person being evaluated.

(2) The applicant licensee or the person being evaluated must give the department permission to speak with the evaluator in subsection (1)(a) through (d) of this section prior to and after the evaluation.

NEW SECTION

WAC 170-06-0070 Disqualification. (1) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed child care facility who has a background containing any of the convictions/actions posted on the DEL secretary's list of permanently disqualifying convictions/actions, shall be permanently disqualified from providing licensed child care or having unsupervised access to any child in care.

(2) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility who has a background containing any of the convictions posted on the DEL secretary's list of nonpermanent disqualifying convictions shall be disqualified from providing licensed child care or having unsupervised access to any child in care for five years after the conviction date.

(3) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility shall be disqualified from providing licensed child care or having unsupervised access to any child in care if there is background information that the person:

(a) Has been found to have committed child abuse or neglect, unless the department determines that the person does not pose a risk to a child's safety and well-being;

(b) Is the parent of a child who has been found to be a dependent child as defined in chapter 13.34 RCW unless the department determines that the person does not pose a risk to a child's safety and well-being;

(c) Abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult as defined in chapter 74.34 RCW, unless the department determines that the person does not pose a risk to a child's safety and well-being;

(d) Had a license denied or revoked from an agency that regulates care of children or vulnerable adults, unless the department determines that the person does not pose a risk to a child's safety and well-being.

(4) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing licensed child care or having unsupervised access to any child in care if:

(a) The licensee attempts to obtain a license by deceitful means, such as making false statements or omitting material information on the application;

(b) The staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility attempted to become employed, volunteer, or otherwise have unsupervised access to children by deceitful means, such as making false statements or omitting material information on an application to work or volunteer at a licensed child care agency or to otherwise provide child care;

(c) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children are present or presented a risk of harm to any child in care; or

(d) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility has attempted, committed, permitted, or assisted in an illegal act on the premises of a home or facility providing care to children. For purposes of this subsection, a licensee attempted, committed, permitted, or assisted in an illegal act if he or she knew or should have known that the illegal act occurred.

(5) A licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing child care or having unsupervised access to any child in care if the person has

background containing information other than conviction information that the department determines:

(a) Makes the person not of suitable character and competence or of sufficient physical or mental health to meet the needs of any child in care; or

(b) Places any person at a licensed child care facility at risk of harm.

NEW SECTION

WAC 170-06-0080 Notification of disqualification.

(1) The department will notify in writing the applicant, care provider, employer, or licensee if the individual is disqualified by the background check from being authorized to care for children or to have unsupervised access to children in child care.

(2) If the department sends a notice of disqualification, the applicant will not receive a license, contract, certification, or be authorized to have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0090 Administrative hearing to contest disqualification.

(1) Any person seeking a license or employment with a licensed facility may request an administrative hearing to contest the department's decision process to disqualify him or her from having unsupervised access to any child in care. Provided, an individual shall not have the right to challenge a discretionary determination made pursuant to WAC 170-06-0070(3).

(2) Prospective volunteers, interns, contracted providers, or those seeking certification do not have the right to appeal the department's decision to disqualify them from having unsupervised access to any child in care.

(3) The employer or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.

(4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW), pursuant to chapter 170-03 WAC.

NEW SECTION

WAC 170-06-0100 Request for administrative hearing.

(1) Any person who has a right to contest a decision to deny a license or disqualify them from having unsupervised access to any child in care based on an evaluation of background check information must request a hearing within twenty-eight days of receipt of the decision.

(2) A request for a hearing must meet the requirements of chapter 170-03 WAC.

(3) Any decision by the department denying a license or disqualifying a person from having unsupervised access to any child in care is effective immediately upon notice and shall continue pending a final administrative decision on the merits.

NEW SECTION

WAC 170-06-0110 Limitations on challenges to disqualifications. (1) If the denial or disqualification is based on a criminal conviction, the appellant cannot contest the conviction in the administrative hearing.

(2) If the denial or disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the appellant cannot contest the finding if:

(a) The appellant was notified of the finding by DSHS and failed to request a hearing to contest the finding; or

(b) The appellant was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the denial or disqualification is based on a court order finding the appellant's child to be dependent as defined in chapter 13.34 RCW, the appellant cannot contest the finding of dependency in the administrative hearing.

WSR 06-14-086**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed July 3, 2006, 10:40 a.m., effective July 3, 2006]

Effective Date of Rule: Immediately.

Purpose: To comply with the requirements of the 2005 legislature, the department is adding new WAC 388-550-2650, to adopt two separate base community psychiatric hospital payments. One is for Medicaid clients and the other is for non-Medicaid clients. The new rule also clarifies that both Involuntary Treatment Act (ITA)-certified hospitals and hospitals that have ITA-certified beds that have been used to treat ITA patients are included in the base community psychiatric hospitalization payment method for Medicaid and non-Medicaid clients.

This emergency rule replaces the emergency filing for WAC 388-550-2650, under WSR 06-06-039.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Other Authority: Section 204, Part II, chapter 518, Laws of 2005 (ESSB 6090).

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

Reasons for this Finding: The legislature appropriated funds for fiscal year 2006 and 2007 to establish a separate base community psychiatric hospitalization payment rate for Medicaid and non-Medicaid clients at hospitals that accept commitments under ITA and free-standing psychiatric hospitals that accept commitments under the ITA and also hospitals that have ITA-certified beds that have been used to treat ITA patients. This rule replaces the emergency rule filed under WSR 06-06-039. The new rule carries out the legisla-

ture's directive while the department completes the permanent rule-making process begun under WSR 05-14-145 and filed on July 5, 2005.

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

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

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

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

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

Date Adopted: July 3, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-550-2650 Base community psychiatric hospitalization payment method for Medicaid and non-Medicaid clients. (1) Effective July 1, 2005 and in accordance with legislative directive, the department implemented two separate base community psychiatric hospitalization payment rates, one for Medicaid clients and one for non-Medicaid clients. (For the purpose of this section, a "non-Medicaid client" is defined as a client eligible under the general assistance unemployable (GAU) program, the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA), the psychiatric indigent inpatient (PII) program, or other state-administered programs, as determined by the department.)

(a) The Medicaid base community psychiatric hospitalization payment rate is a minimum per diem allowable calculated for claims for psychiatric services provided to Medicaid covered patients, to pay hospitals that accept commitments under the involuntary treatment act (ITA).

(b) The non-Medicaid base community psychiatric hospitalization payment rate is a minimum per diem allowable calculated for claims for psychiatric services provided to indigent patients to pay hospitals that accept commitments under the ITA.

(2) A client's inpatient psychiatric hospitalization must have a root cause that is psychiatric in nature. The department:

(a) Defines "root cause" as the reason the client was admitted based on the principal diagnosis and the department's review of the client's medical record; and

(b) Does not consider detoxification to be psychiatric in nature.

(3) All inpatient hospital psychiatric admissions require regional support network (RSN) prior authorization. The RSN-approved length of stay (LOS) is based on a client's discharge diagnosis.

(a) The number of department-covered days that are linked to claims paid under the DRG payment method becomes the RSN-approved LOS for those claims. If the case is a transfer case, the DRG average LOS becomes the LOS that is used to determine the allowable on the claim. See WAC 388-550-3600.

(b) The RSN-approved LOS for claims paid using a non-DRG payment method is established by the RSN in conjunction with the mental health division.

(4) Payment for claims is based on covered days within a client's approved LOS, subject to client eligibility and department-covered services.

(5) The Medicaid base community psychiatric hospitalization payment rate applies only to a Medicaid client admitted to a nonstate-owned free-standing psychiatric hospital located in Washington state.

(6) The non-Medicaid base community psychiatric hospitalization payment rate applies only to a non-Medicaid client admitted to a hospital:

(a) Designated by the department as an Involuntary Treatment Act (ITA)-certified hospital; or

(b) That has a department certified ITA bed that has been used to provide ITA services at the time of the non-Medicaid admission.

(7) For inpatient hospital psychiatric services provided to eligible clients on and after July 1, 2005, the department pays:

(a) A hospital's DOH-certified distinct psychiatric unit, as follows:

(i) For Medicaid clients, the department pays inpatient hospital psychiatric claims using the department-specific non-DRG payment method.

(ii) For non-Medicaid clients, the department uses as the allowable for inpatient hospital psychiatric claims, the greater of:

(A) The state-only diagnostic-related group (DRG) allowable (including the high cost outlier allowable, of applicable), or the department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system; or

(B) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(b) A hospital without a DOH-certified distinct psychiatric unit, as follows:

(i) For Medicaid clients, the department pays inpatient hospital psychiatric claims using:

(A) The DRG payment method; or

(B) The department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system.

(ii) For non-Medicaid clients, the department uses as the allowable for inpatient hospital psychiatric claims, the greater of:

(A) The state-only diagnostic-related group (DRG) allowable (including the high cost outlier allowable, if applicable), or the department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system; or

(B) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(c) A non-state-owned free-standing psychiatric hospital, as follows:

(i) For Medicaid clients, the department uses as the allowable for inpatient hospital psychiatric claims, the greater of:

(A) The RCC allowable; or

(B) The Medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(ii) For non-Medicaid clients, the department pays inpatient hospital psychiatric claims the same as for Medicaid clients, except the base community psychiatric hospitalization payment rate is the non-Medicaid rate, and the RCC allowable is the state-only RCC allowable.

(d) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the CPE payment program, as follows:

(i) For Medicaid clients, the department pays inpatient hospital psychiatric claims using the methods identified in WAC 388-550-4650.

(ii) For non-Medicaid clients, the department pays inpatient hospital psychiatric claims using the methods identified in WAC 388-550-4650, except that the allowable to which the federal financial participation (FFP) percentage is applied is the greater of:

(A) The RCC allowable; or

(B) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(e) A hospital, or a distinct psychiatric unit of a hospital that is participating in the CAH program, as follows:

(i) For Medicaid clients, the department pays inpatient hospital psychiatric claims using the department-specified non-DRG payment method.

(ii) For non-Medicaid clients, the department pays inpatient hospital psychiatric claims using the department-specified non-DRG payment method.

WSR 06-14-095

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed July 5, 2006, 11:21 a.m., effective July 5, 2006]

Effective Date of Rule: Immediately.

Purpose: The board adopted proposed permanent rule, WSR 06-10-081 on June 14, 2006, and goes into effect September 1, 2006. This emergency rule is necessary for the department to retain the names of reascertained asymptomatic HIV cases. This proposed rule: (1) Requires the department to reascertain the names of previously reported asymptomatic HIV cases; (2) allows the department to maintain cases in a named-based surveillance system; and (3) requires local health jurisdiction's to assist the department in reascertainment. Names are destroyed at local level within three days of reporting.

Citation of Existing Rules Affected by this Order: Amending WAC 246-101-520 and 246-101-635, Special conditions—AIDS and HIV.

Statutory Authority for Adoption: RCW 70.24.125.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline

for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The current emergency rule, WSR 06-07-043, was adopted by the board of health on March 8, 2006, and lapses on July 6, 2006. This emergency rule is necessary for the department to retain the authority to reascertain the identities of previously reported asymptomatic HIV cases and maintain these cases in a name-based surveillance system until the permanent rule goes into effect on September 1, 2006. The department is in compliance with federal HIV reporting standards and maintains federal HIV/AIDS care funding through this 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 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 27, 2006.

Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-101-520 Special conditions—AIDS and HIV. Through August 31, 2006:

(1) The local health officer and local health department personnel shall maintain individual case reports for AIDS and HIV as confidential records consistent with the requirements of this section. The local health officer and local health department personnel shall:

(a) Use identifying information on HIV-infected individuals only:

(i) For purposes of contacting the HIV-positive individual to provide test results and post-test counseling; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention; or

(iv) As specified in WAC 246-100-072; or

(v) To provide case reports that contain identifying information to the state health department.

(b) Destroy case report identifying information on asymptomatic HIV-infected individuals received as a result of this chapter within three months of receiving a complete case report.

(c) Destroy documentation of referral information established in WAC 246-100-072 and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first unless such documentation is being used in an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024.

(d) Not disclose identifying information received as a result of this chapter unless:

(i) Explicitly and specifically required to do so by state or federal law; or

(ii) Authorized by written patient consent.

(2) Local health department personnel are authorized to use HIV identifying information obtained as a result of this chapter only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services;

(c) Linkage to other public health data bases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department; and

(d) Investigations pursuant to RCW 70.24.022 or 70.24.024.

(3) Public health data bases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or data bases maintained by law enforcement officials.

(4) Local health officials will report asymptomatic HIV infection cases to the state health department (~~(according to a standard code developed by the state health department)~~).

(5) Local health officers shall require and maintain signed confidentiality agreements with all health department employees with access to HIV identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

(6) Local health officers shall investigate potential breaches of the confidentiality of HIV identifying information by health department employees. All breaches of confidentiality shall be reported to the state health officer or their designee for review and appropriate action.

(7) Local health officers and local health department personnel shall:

(a) Assist the state health department to reascertain (replace coded identifiers with names) the identities of previously reported cases of asymptomatic HIV infection;

(b) Within three days of obtaining the identities, report the identities of such previously reported cases to the state health department; and

(c) Destroy the identifying information upon report to the state health department.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-635 Special conditions—AIDS and HIV. ~~Through August 31, 2006,~~ the following provisions apply for the use of AIDS and HIV notifiable conditions case reports and data:

(1) Department personnel shall not disclose identifying information received as a result of receiving information regarding a notifiable conditions report of a case of AIDS or HIV unless:

(a) Explicitly and specifically required to do so by state or federal law; or

(b) Authorized by written patient consent.

(2) Department personnel are authorized to use HIV identifying information received as a result of receiving information regarding a notifiable conditions report of a case of AIDS or HIV only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services; and

(c) Linkage to other public health data bases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department.

(3) For the purposes of this chapter, public health data bases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or data bases maintained by law enforcement officials.

(4) The state health officer shall require and maintain signed confidentiality agreements with all department employees with access to HIV identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

(5) The state health officer shall investigate potential breaches of the confidentiality of HIV identifying information by department employees. All breaches of confidentiality shall be reported to the state health officer or their authorized representative for review and appropriate action.

(6) The department shall maintain all HIV case reports in a name-based surveillance system solely for the purpose of complying with HIV reporting requirements from the federal Centers for Disease Control and Prevention.

(7) Authorized representatives of the department shall review available records to reascertain the identities of previously reported cases of asymptomatic HIV infection and retain those cases in a confidential name-based system.

(8) When providing technical assistance to a local health department, authorized representatives of the department may temporarily and subject to the time limitations in WAC ~~((246-101-525(2)))~~ 246-101-520 receive the names of reportable cases of asymptomatic HIV infection for the purpose of ~~((HIV surveillance,))~~ partner notification, or special studies. Upon completion of the activities by representatives of the state health department, named information will be ~~((=~~

~~((+)))~~ provided to the local health department subject to the provisions of WAC ~~((246-101-525(2); and~~

~~((b) Converted to code and maintained as code only until the person is diagnosed with AIDS))~~ 246-101-520.

~~((7)))~~ (9) Within twelve months of the effective date of the HIV infection notification system (by September 1, 2000), established in this chapter, the state health officer, in cooperation with local health officers, will report to the board on:

(a) The ability of the reporting system to meet surveillance performance standards established by the federal Centers for Disease Control and Prevention;

(b) The cost of the reporting system for state and local health departments;

(c) The reporting system's effect on disease control activities; and

(d) The impact of HIV reporting on HIV testing among persons at increased risk of HIV infection.