

WSR 19-13-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-116—Filed June 6, 2019, 9:54 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Purpose: Amend coastal commercial crab fishing rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000S; and amending WAC 220-340-420.

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

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

Reasons for this Finding: The reduction in pot limits is necessary to reduce the number of lines in the water to limit the risk of marine mammal interactions. The weekly landing limit and period is necessary to mitigate handling mortality from sorting soft-shelled crab and provide for an orderly fishery. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 6, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000T Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420:

(1) Effective 12:01 a.m. July 1, 2019 until further notice, it is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery to:

(a) Deploy or operate more than a total of 330 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than a total of 200 shellfish pots if the permanent number of shellfish pots assigned to the

Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(2) Effective 12:01 a.m. July 7, 2019 until further notice, it is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 2,500 pounds taken during each of the following coastal crab accounting periods:

- July 7 - July 13, 2019
- July 14 - July 20, 2019
- July 21 - July 27, 2019
- July 28 - August 3, 2019
- August 4 - August 10, 2019
- August 11 - August 17, 2019
- August 18 - August 24, 2019
- August 25 - August 31, 2019
- September 1 - September 7, 2019
- September 8 - September 15, 2019

(3) Any crab taken prior to July 7, 2019, and not landed before 11:59 p.m. July 6, 2019, become part of the July 7 through July 13, 2019 accounting period catch.

(4) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

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

REPEALER

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

WAC 220-340-42000S Commercial crab fishery—Unlawful acts. (19-91)

WSR 19-13-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-118—Filed June 6, 2019, 2:25 p.m., effective June 21, 2019]

Effective Date of Rule: June 21, 2019.

Purpose: Amend recreational shrimp fishing rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000P; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available in Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7 West and 12. In addition, harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp consistent with signed management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 6, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000Q Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective June 21, 2019, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open daily to the harvest of all shrimp species until further notice.

(2) Marine Area 7 East: Open until further notice to the harvest of all species except spot shrimp in waters equal to or less than 200 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) Marine Areas 6 (excluding the Discovery Bay Shrimp District) and Marine Area 7 West: Open June 1 until further notice to the harvest of all shrimp species on Thursdays, Fridays, Saturdays, and Sundays only.

(4) Marine Areas 8-1, 8-2, 9, and 11: Open until further notice to the harvest of all species except spot shrimp in waters equal to or less than 150 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(5) Marine Area 13: Open until further notice to the harvest of all species except spot shrimp in waters equal to or less than 250 feet. All spot shrimp caught must be immedi-

ately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 250 feet deep.

(6) Marine Area 12: Open to the harvest of all shrimp species on June 21, 2019 from 12:00 p.m. through 4:00 p.m. and on June 22, 2019 from 12:00 p.m. through 4:00 p.m.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 21, 2019:

WAC 220-330-07000P Shrimp—Areas and seasons. (19-112)

WSR 19-13-024

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-117—Filed June 10, 2019, 3:41 p.m., effective June 10, 2019, 3:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound recreational crab rules.

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

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational crab harvest in the marine areas listed to achieve the 50/50 harvest defined by the federal court order. Recreational crab fisheries will open at 12:01 a.m. on the first day instead of 7:00 a.m. in each of the marine areas as stipulated by the permanent rule. Marine Areas 11, 12 south of a line projected due east from Ayock Point, and 13 will be closed. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 10, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000F Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective immediately until further notice, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

(1) Marine Areas 4 east of the Bonilla-Tatoosh line, 5, 6, 8-1, 8-2, and 9: Effective 12:01 a.m. July 4, 2019, through 11:59 p.m. September 2, 2019, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(2) Marine Area 10: Effective 12:01 a.m. July 4, 2019, through 11:59 p.m. August 3, 2019, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(3) The portion of Marine Area 12 north of a line projected due east from Ayock Point: Effective 12:01 a.m. July 4, 2019, through 11:59 p.m. September 2, 2019, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(4) The portion of Marine Area 12 south of a line projected due east from Ayock Point: Closed until further notice.

(5) Those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence true west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective 12:01 a.m. July 11, 2019, through 11:59 p.m. September 30, 2019, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(6) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island true west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective 12:01 a.m. August 15, 2019, through 11:59 p.m. September 30, 2019, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(7) Marine Areas 11 and 13: Closed until further notice.

REPEALER

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

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

WSR 19-13-025

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-121—Filed June 10, 2019, 3:52 p.m., effective June 12, 2019, 5:00 a.m.]

Effective Date of Rule: June 12, 2019, 5:00 a.m.

Purpose: Amend commercial shrimp fishery rules for Puget Sound.

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

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

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

Reasons for this Finding: The 2019 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule: (1) Opens the Regions 1 and 3 trawl fishery season; (2) opens the pot fishery season for nonspot shrimp with weekly harvest limits; (3) closes the nonspot shrimp pot fishery in Shrimp Management Area 1A, 1B and 1C until further notice. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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 10, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000C Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective at 5:00 AM, June 12, 2019, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

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

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 1A, 1B and 1C are closed until further notice.

(iii) In Catch Area 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 6:00 a.m. June 16, 2019.

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

(c) Effective immediately, until further notice, the shrimp catch accounting week is Wednesday through Tuesday.

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

(2) Shrimp trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) The remaining portion of Catch Area 22A within SMA 1B will open immediately, until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective at 5:00 AM, June 12, 2019:

WAC 220-340-52000B Puget Sound shrimp pot and trawl fishery—Season. (19-109)

**WSR 19-13-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-119—Filed June 11, 2019, 3:36 p.m., effective June 11, 2019, 3:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreation[a] fishing rules for Swift Reservoir and Salmon Creek.

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

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

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

Reasons for this Finding: This rule is needed to correct a previous filing: (1) A previous filing included a portion of Swift Reservoir, this was removed and selective gear rules (SGR) remain in place as there is no directed salmon fishery in this area; (2) Salmon Creek (Clark County) inadvertently had SGR added, this has been corrected to make the use of barbless hooks voluntary for salmon and steelhead while removing SGR from the emergency rule. This rule implements the policy direction provided by the commission on March 2, 2019, to make the use [of] barbless hooks voluntary for salmon and steelhead fisheries in the Columbia River and its tributaries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 11, 2019.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

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

(1) Barbed hooks are allowed for salmon and steelhead in the following waters:

- (a) Blue Creek (Lewis County), from the mouth to Spencer Road
 - (b) Cispus River (Lewis County)
 - (c) Coweeman River and tributaries (Cowlitz/Lewis County)
 - (d) Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County)
 - (e) Drano Lake (Skamania County)
 - (f) Elochoman River (Wahkiakum County)
 - (g) Grays River (Wahkiakum County)
 - (h) Grays River, West Fork (Wahkiakum County)
 - (i) Kalama River (Cowlitz County)
 - (j) Klickitat River (Klickitat County)
 - (k) Lewis River (Clark County)
 - (l) Rock Creek (Skamania County)
 - (m) Salmon Creek (Clark County): From the mouth to 182nd Avenue Bridge.
 - (n) Tilton River (Lewis County)
 - (o) Toutle River (Cowlitz County)
 - (p) Toutle River, North Fork (Cowlitz County)
 - (q) Washougal River (Clark County)
 - (r) Washougal River, West (North) Fork (Clark/Skamania counties)
 - (s) White Salmon River (Klickitat/Skamania counties)
- (2) Barbed hooks are allowed for salmon, steelhead, and cutthroat in the Cowlitz River (Cowlitz/Lewis County)
- (3) Selective gear rules, except: barbed hooks are allowed in the following waters:
- (a) Abernathy Creek and tributaries (Cowlitz County)
 - (b) Cedar Creek and tributaries (tributary of N.F. Lewis) (Clark County)
 - (c) Coal Creek (Cowlitz County)
 - (d) Delameter Creek (Cowlitz County)
 - (e) Germany Creek (Cowlitz County) and all tributaries.
 - (f) Grays River (Wahkiakum County)
 - (g) Grays River, East Fork (Wahkiakum County)
 - (h) Grays River, South Fork (Wahkiakum County)
 - (i) Grays River, West Fork tributaries (Wahkiakum County)
 - (j) Green River (Cowlitz County)
 - (k) Hamilton Creek (Skamania County)
 - (l) Kalama River (Cowlitz County): From 1,000 feet above fishway at upper salmon hatchery to Summers Creek and from the intersection of 6000 and 6420 Rds. to 6600 Rd. bridge immediately downstream of Jacks Creek.
 - (m) Lacamas Creek (Clark County): From mouth to foot-bridge at lower falls.
 - (n) Lacamas Creek, tributary of Cowlitz River (Lewis County)
 - (o) Lewis River, East Fork (Clark/Skamania counties): From mouth to 400 feet below Horseshoe Falls.
 - (p) Little Washougal River (Clark County)
 - (q) Mill Creek (Cowlitz County)
 - (r) Mill Creek (Lewis County): From the mouth to the hatchery road crossing culvert.
 - (s) Olequa Creek (Lewis/Cowlitz counties)
 - (t) Outlet Creek (Silver Lake) (Cowlitz County)
 - (u) Salmon Creek (Lewis County)

- (v) Skamokawa Creek (Wahkiakum County)
 - (w) Stillwater Creek (Lewis County)
 - (x) Toutle River, North Fork (Cowlitz County): From the mouth to the posted deadline below the fish collection facility.
 - (y) Wind River (Skamania County): from 100 feet above Shipherd Falls to Moore Bridge.
 - (z) White Salmon River (Klickitat/Skamania counties): From the county road bridge below the former location of the powerhouse upstream to Big Brother Falls (river mile 16).
- (4) Fly fishing only, except: use of barbed hooks is allowed in the Kalama River (Cowlitz County): From Summers Creek to the intersection of 6000 and 6420 Rds.

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 immediately:

WAC 220-312-03000R Freshwater exceptions to statewide rules—Southwest.

WSR 19-13-043

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 12, 2019, 1:03 p.m., effective June 12, 2019, 1:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The extended foster care WAC are being amended to align with recent changes in legislation regarding the eligibility requirements for the program. These changes went into effect on July 1, 2018. These changes are currently in the process of becoming permanent.

Citation of Rules Affected by this Order: Repealing WAC 110-90-0041 and 110-90-0042; and amending WAC 110-90-0020, 110-90-0030, 110-90-0040, 110-90-0110, and 110-90-0140.

Statutory Authority for Adoption: RCW 13.34.267, 13.34.268, 74.13.020, 74.13.031, 74.13.336.

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

Reasons for this Finding: These changes in legislation went into effect on July 1, 2018, and [were] originally filed under WSR 18-21-090. The department is filing an extension while they go through the permanent rule-making process.

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 5, Repealed 2.

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

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

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

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

Date Adopted: June 12, 2019.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0020 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults (~~(in foster care)~~) who are dependent at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth:

- (1) Completes a high school or a high school equivalency program;
- (2) Completes a secondary or post-secondary academic or vocational program;
- (3) Participates in a program or activity designed to promote employment or remove barriers to employment;
- (4) Is engaged in employment for eighty hours or more per month; or
- (5) Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0030 What is extended foster care? Extended foster care is a program offered to young adults, age eighteen to twenty-one, who turn eighteen while in (~~foster care~~) a dependency, to enable them to:

- (1) Complete a high school diploma or high school equivalency certificate;
- (2) Complete a post-secondary academic or vocational program;
- (3) Participate in a program or activity designed to promote employment or remove barriers to employment;
- (4) Be employed for eighty hours or more per month; or
- (5) Participate in the program if unable to engage in subsections (1) through (4) of this section due to a documented medical condition.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0040 Who is eligible for extended foster care? (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW (~~(placed in foster care as defined in WAC 388-25-0508 by CA.)~~) and:

(a) Enrolled in school as described in WAC (~~(388-25-0512)~~) 110-90-0050;

(b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC (~~(388-25-0514)~~) 110-90-0060;

(c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC (~~(388-25-0515)~~) 110-90-0070;

(d) Engaged in employment for eighty hours or more per month;

(e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC (~~(388-25-0519)~~) 110-90-0100; or

(f) Did not enroll in the extended foster care program; and

(i) Had their dependency dismissed on their eighteenth birthday;

(ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of (~~(nineteen)~~) twenty-one; and

(iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.

(2) A youth is not eligible to enroll in extended foster care while in the care and custody of juvenile rehabilitation, county detention, or in the department of corrections. Youth meeting EFC eligibility in subsection (1)(a) through (e) of this section may enroll when they are released from juvenile rehabilitation, county detention, or department of corrections custody.

(3) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA (~~(one time)~~) before the age of twenty-one. The youth must meet one of the criteria in subsection (1)(a) through (e) when requesting to reenroll in the extended foster care program.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0110 How does a youth agree to participate in the extended foster care program? (1) An eligible dependent youth can agree to participate by:

(a) Signing an extended foster care agreement; or

(b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age (~~(nineteen)~~) twenty-one; or

(b) Establishing a nonminor dependency before reaching age (~~(nineteen)~~) twenty-one if the department denied entry into the program.

(3) An eligible (~~(nondependent)~~) nonminor dependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one (~~(as long as the youth has not previously entered into a VPA for extended foster care services)~~).

(4) In order to continue receiving extended foster care services after entering into a VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a VPA.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0140 If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care? ~~((+))~~ Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as the youth:

~~((a)) (1) Has not turned twenty-one; and
((b)) (2) Meets one of the conditions for eligibility in WAC ((388-25-0506)) 110-90-0040 (1)(a) through (e); and
(c) Has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.
(2) Youth may reenter the extended foster care program one time between the ages of eighteen to twenty-one).~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-90-0041 When is a youth considered to be "in foster care"?

WAC 110-90-0042 When is a youth not "in foster care"?

WSR 19-13-049 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-122—Filed June 13, 2019, 11:19 a.m., effective June 15, 2019, 4:04 a.m.]

Effective Date of Rule: June 15, 2019, 4:04 a.m.

Purpose: Amends recreation[al] salmon fishing rules for the Icicle River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000F; and amending WAC 220-312-050.

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

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

Reasons for this Finding: This rule is needed to open a spring Chinook fishery on portions of the Icicle River. Broodstock collection goals have been met at the Leavenworth National Fish Hatchery and there is a harvestable surplus of hatchery Chinook available. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 13, 2019.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000J Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective 4:04 a.m., June 15 through July 31, 2019:

Icicle River:

(a) From the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam is closed to all species, except open for salmon fishing:

(i) Daily limit 1, minimum length 12 inches. Release all salmon other than hatchery Chinook.

(ii) Mandatory retention of hatchery Chinook.

(iii) Night closure.

(b) From the shoreline markers where Cyo Road intersects the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation Footbridge (approximately 750 feet upstream of the Snow Lakes trailhead parking area) is closed to all species, except open for salmon fishing:

(i) Daily limit 1, minimum length 12 inches. Release all salmon other than hatchery Chinook.

(ii) Mandatory retention of hatchery Chinook.

(iii) Night closure.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:04 a.m., June 15, 2019:

WAC 220-312-05000F Freshwater exceptions to statewide rules—Eastside.

WSR 19-13-057
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed June 14, 2019, 11:05 a.m., effective June 14, 2019, 11:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making implements 2ESHB 1388 which changed the designation of the state behavioral health authority from the department of social and health services to the health care authority, effective July 1, 2018. The health care authority is the single state medicaid agency responsible for state health care purchasing. These emergency rules are substantially the same as the rules in chapter 388-865 WAC and a few sections regarding the grievance processes in chapter 388-877 WAC that were repealed by the department of social and health services.

Citation of Rules Affected by this Order: New WAC 182-100-0100, 182-538D-0200, 182-538D-0232, 182-538D-0234, 182-538D-0236, 182-538D-0242, 182-538D-0246, 182-538D-0248, 182-538D-0252, 182-538D-0254, 182-538D-0256, 182-538D-0258, 182-538D-0262, 182-538D-0264, 182-538D-0266, 182-538D-0268, 182-538D-0272, 182-538D-0370, 182-538D-0375, 182-538D-0380, 182-538D-0385, 182-538D-0526, 182-538D-0600, 182-538D-0620, 182-538D-0630, 182-538D-0640, 182-538D-0654, 182-538D-0655, 182-538D-0660, 182-538D-0665, 182-538D-0670, 182-538D-0675, and 182-538D-0680.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 2ESHB 1388.

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: 2ESHB 1388 directs the transfer of the behavioral health authority to the health care authority, effective July 1, 2018. This emergency filing is necessary to continue the current emergency rules filed under WSR 19-05-053, which are set to expire on June 15, 2019, while the agency moves through the permanent rule-making process. The agency is currently working with a growing number of subject matter experts to revise and refine the rules. Since the last emergency filing, the agency has convened multiple workgroups of subject matter experts who meet regularly to revise the draft. The draft is close to being ready for agency and stakeholder review.

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 33, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 33, Amended 0, Repealed 0.

Date Adopted: June 14, 2019.

Wendy Barcus
Rules Coordinator

Chapter 182-100 WAC

PROBLEM GAMBLING

NEW SECTION

WAC 182-100-0100 Problem and pathological gambling treatment services. (1) Under RCW 43.20A.890, the Washington state health care authority (HCA) administers a program for:

(a) The prevention and treatment of problem and pathological gambling; and

(b) The training of professionals in the identification and treatment of problem and pathological gambling, to be administered by a qualified person who has training and experience in problem gambling or the organization and administration of treatment services for persons suffering from problem gambling.

(2) HCA tracks program participation and participant outcomes.

(3) To receive treatment under this program, a person must:

(a) Need treatment for problem or pathological gambling, or because of the problem or pathological gambling of a family member, but is unable to afford treatment; and

(b) Be identified by HCA as being most amenable to treatment.

(4) Treatment under this section is available only to the extent of the funds appropriated or otherwise made available to HCA for this purpose.

(5) Problem and pathological gambling treatment services include diagnostic screening and assessment, and individual, group, couples, and family counseling and case management.

(6) A person must have an assessment before receiving problem and pathological gambling services. The purpose of the assessment is to determine if a gambling disorder exists and if there are services available to address the person's needs. The assessment must follow the requirements in WAC 246-341-0610.

(7) An agency providing problem and pathological gambling services must meet the behavioral health agency licensure, certification, administration, personnel, clinical, and outpatient requirements in WAC 246-341-0754 and 246-341-0300 through 246-341-0650.

(8) Definitions for the purposes of this section only.

(a) **"Pathological gambling"** means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to

gamble, and continuation of gambling despite adverse consequences;

(b) **"Problem gambling"** means an earlier stage of pathological gambling which compromises, disrupts, or damages family or personal relationships, or vocational pursuits.

Chapter 182-538D WAC

BEHAVIORAL HEALTH SERVICES

NEW SECTION

WAC 182-538D-0200 Behavioral health services—

Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Adult" means a person age eighteen or older. For purposes of the medicaid program, adult means a person age twenty-one or older.

"Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the person, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"Behavioral health" means the prevention, treatment of, and recovery from substance use disorders, mental health disorders or problem and pathological gambling disorders.

"Behavioral health organization" or **"BHO"** means any county authority or group of county authorities or other entity recognized by the director in contract in a defined region.

"Behavioral health organization (BHO) managed care organization (MCO)" is the entity that operates the prepaid inpatient health plan (PIHP) for medicaid behavioral health services.

"Chemical dependency professional" or **"CDP"** means a person credentialed by the department of health as a chemical dependency professional (CDP) with primary responsibility for implementing an individualized service plan for substance use disorder services.

"Child" means a person under the age of eighteen. For the purposes of the medicaid program, child means a person who is under the age of twenty-one.

"Clinical record" means a paper or electronic file that is maintained by the behavioral health organization and contains pertinent psychological, medical, and clinical information for each person served.

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week; prescreening determinations for people who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychother-

apy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health organizations.

"Complaint" means the expression of a dissatisfaction with a service or program which may be investigated by the health care authority.

"Consent" means agreement given by a person after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

"Consultation" means the clinical review and development of recommendations regarding activities, or decisions of, clinical staff, contracted employees, volunteers, or students by people with appropriate knowledge and experience to make recommendations.

"County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

"Crisis" means an actual or perceived urgent or emergent situation that occurs when a person's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

"Cultural competence" or **"culturally competent"** means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which people from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging people to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

"Designated crisis responder (DCR)" means a mental health professional appointed by a behavioral health organization (BHO) to perform the duties described in RCW 70.96A.140.

"Disability" means a physical or mental impairment that substantially limits one or more major life activities of a person and the person:

- (a) Has a record of such an impairment; or
- (b) Is regarded as having such impairment.

"Ethnic minority" or **"racial/ethnic groups"** means, for the purposes of this chapter, any of the following general population groups:

- (a) African American;
- (b) An American Indian or Alaskan native, which includes:

(i) A person who is a member or considered to be a member in a federally recognized tribe;

(ii) A person determined eligible to be found Indian by the secretary of interior;

(iii) An Eskimo, Aleut, or other Alaskan native; and

(iv) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off-reservation Indian/Alaskan native community organization.

(c) Asian/Pacific Islander; or

(d) Hispanic.

"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

"Housing services" means the active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs.

"Less restrictive alternative (LRA)" means court ordered outpatient treatment in a setting less restrictive than total confinement.

"Licensed" means the status given to behavioral health agencies by the department of health under its authority to license and certify mental health programs chapters 71.05, 71.34, and 71.24 RCW and its authority to certify substance use disorder treatment programs chapter 70.96A RCW.

"Mental health professional" means a person who meets the following:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of people with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department of health or attested to by the licensed behavioral health agency;

(d) A person who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(e) A person who had an approved waiver to perform the duties of a mental health professional (MHP) that was requested by a behavioral health organization (BHO) and granted by the department of social and health services mental health division prior to July 1, 2001.

"Mental health specialist" means:

(a) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(ii) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(b) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of people age sixty and older; and

(ii) The equivalent of one year of full-time experience in the treatment of people age sixty and older, under the supervision of a geriatric mental health specialist.

(c) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

(i) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(ii) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority individuals.

(d) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, "disabled" means a person with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(i) If the consumer is deaf, the specialist must be a mental health professional with:

(A) Knowledge about the deaf culture and psychosocial problems faced by people who are deaf; and

(B) Ability to communicate fluently in the preferred language system of the consumer.

(ii) The specialist for people with developmental disabilities must be a mental health professional who:

(A) Has at least one year experience working with people with developmental disabilities; or

(B) Is a developmental disabilities professional as defined in RCW 71.05.020.

"Peer counselor" means a person recognized by DBHR as a person who:

(a) Is a self-identified consumer of mental health services;

(b) Is a counselor credentialed under chapter 18.19 RCW;

(c) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the department of social and health services before October 1, 2004, and has met the requirements in (a), (b) and (d) of this subsection by January 31, 2005, the person is exempt from completing this specialized training;

(d) Has successfully passed an examination administered by DBHR or an authorized contractor; and

(e) Has received a written notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

"Quality assurance and quality improvement" means a focus on compliance to minimum requirements in rules and contracts, and activities to perform above minimum standards and achieve reasonably expected levels of performance, quality, and practice.

"Quality strategy" means an overarching system and/or process whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a behavioral health organization's (BHO's) operations.

"Recovery" means a process of change through which people improve their health and wellness, lives a self-directed life, and strives to reach their full potential.

"Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for people who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Resource management services" means the planning, coordination, and authorization of residential services and community support services for people who are:

- (a) Adults and children who are acutely mentally ill;
- (b) Adults who are chronically mentally ill;
- (c) Children who are severely emotionally disturbed; or
- (d) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for delivery of behavioral health services.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that a person continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

"Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

"Youth" means a person who is age seventeen or younger.

BEHAVIORAL HEALTH ORGANIZATIONS

NEW SECTION

WAC 182-538D-0232 Behavioral health organizations—General. (1) A behavioral health organization (BHO) contracts with the division of behavioral health and recovery (DBHR) to administer behavioral health services within its service area.

(2) A BHO operates only in areas of the state that have not implemented the Washington apple health fully integrated managed care (FIMC) program. See chapter 182-538A WAC for rules that govern the FIMC program.

(3) BHOs, behavioral health agencies, and the BHO managed care organization (MCO) must:

(a) Comply with chapters 70.96A, 71.05, 71.24, 71.34, and 71.36 RCW, which contain laws regarding substance use disorders, mental illness, and community mental health services.

(b) Meet the requirements in this chapter and chapter 246-341 WAC regarding the licensure of behavioral health agencies and the certification of behavioral health services. An exemption of any section or subsection may be requested, subject to the criteria in WAC 182-538D-0236. DBHR does not exempt any requirement that is part of statute.

(4) A BHO is responsible to ensure behavioral health services are responsive in an age and culturally competent manner to the substance use disorder treatment and mental health needs of its community.

(5) DBHR administers behavioral health services regionally if the criteria in WAC 182-538D-0234 apply.

(6) The BHO MCO is the entity that operates the prepaid inpatient health plan (PIHP) medicaid behavioral health services.

(7) WAC 182-538D-0200 contains definitions for terms and phrases used in the BHO and the BHO MCO rules.

NEW SECTION

WAC 182-538D-0234 Behavioral health organizations—When the division of behavioral health and recovery administers regional behavioral health services. (1) If a currently operating behavioral health organization (BHO) chooses to stop functioning as a BHO, fails to meet state minimum standards specified in rule, or does not meet the requirements under RCW 71.24.045, the following is implemented:

(a) Under RCW 71.24.035(16), the director of the health care authority:

(i) Is designated as the BHO until a new BHO is designated; and

(ii) Assumes the duties assigned to the region without a participating BHO.

(b) The division of behavioral health and recovery (DBHR):

(i) Administers behavioral health services within the region without a participating BHO; and

(ii) Continues to apply the BHO requirements in WAC 182-538D-0232 through 182-538D-0272 and the BHO man-

aged care organization requirements in WAC 182-538D-0370 through 182-538D-0385.

(2) A person who resides within the service area of a region without a participating BHO:

(a) May receive services, within available resources as defined in RCW 71.24.025(2), from any provider of behavioral health services that is contracted with DBHR and licensed by the department of health; and

(b) Who is a Title XIX medicaid client entitled to receive medically necessary behavioral health services without charge to the client.

(3) This section does not apply to a region in which the health care authority operates the Washington apple health fully integrated managed care (FIMC) program which provides fully integrated physical and behavioral health services to medicaid clients through a health care authority-contracted managed care organization. See chapter 182-538A WAC for information on Washington apple health FIMC.

NEW SECTION

WAC 182-538D-0236 Behavioral health organizations—How to request an exemption of a minimum standard. (1) A behavioral health organization (BHO), a licensed behavioral health agency, and the behavioral health organization (BHO) managed care organization (MCO) subject to the BHO and BHO MCO rules may request an exemption of a minimum standard in WAC 182-538D-0232 through 182-538D-0272 and 182-538D-0370 through 182-538D-0385 by submitting a request in writing to the director of the division of behavioral health and recovery (DBHR).

(2) The exemption request must include:

(a) The name and address of the entity that is making the request;

(b) The specific section or subsection of the rule for which an exemption is being requested;

(c) The reason why the exemption is necessary, or the method the entity will use to meet the desired outcome of the section or subsection in a more effective and efficient manner;

(d) A description of the plan and timetable to achieve compliance with the minimum standard or to implement, test, and report results of an improved way to meet the intent of the section or subsection;

(e) Documentation that the quality review team or behavioral health ombuds office was consulted and any resulting recommendations are included in the request; and

(f) A description of how people affected by the exemption will be notified.

(3) DBHR's review of the request considers whether approving the exemption will impact accountability, accessibility, efficiency, individual satisfaction, and quality of care, or will violate state or federal law. The requestor receives a determination notice from DBHR within thirty days from the date the exemption request was received.

(a) If DBHR grants the exemption request, the notice includes:

(i) The section or subsection of rule exempted;

(ii) The conditions of acceptance;

(iii) The time frame for which the exemption is approved; and

(iv) Notification that the exemption may be renewed upon request of the party that initially asked for the exemption. In this case, the requestor must submit a renewal request to the director of DBHR before the time frame of the initial exemption expires, and meet the applicable requirements of subsection (1) of this section.

(b) If DBHR denies the exemption request, the notice includes the reason for the denial.

(4) DBHR cannot exempt any minimum standard that is required by:

(a) Statute; or

(b) Another state agency.

NEW SECTION

WAC 182-538D-0242 Behavioral health organizations—Payment for behavioral health services. Within available resources as defined in RCW 71.24.025(4), a behavioral health organization (BHO) must ensure a person's eligibility for and payment for behavioral health services meet the following:

(1) A person who is eligible for medicaid is entitled to receive covered medically necessary behavioral health services without charge to the person, consistent with the state's medicaid state plan or federal waiver authorities. A medicaid recipient is also entitled to receive behavioral health services from a behavioral health organization (BHO) managed care organization (MCO) without charge.

(2) A person who is not eligible for medicaid is entitled to receive behavioral health services consistent with priorities established by the health care authority. The person, the parent(s) of the person under age eighteen, the person's legal guardian, or the estate of the person:

(a) Is responsible for payment for services provided; and

(b) May apply to the following entities for payment assistance:

(i) The health care authority for medical assistance;

(ii) The behavioral health service provider for payment responsibility based on a sliding fee scale; or

(iii) The BHO MCO for authorization of payment for involuntary evaluation and treatment services.

NEW SECTION

WAC 182-538D-0246 Behavioral health organizations—Public awareness of behavioral health services. A behavioral health organization (BHO) or its designee must provide public information on the availability of mental health and substance use disorder services. The BHO must:

(1) Maintain information on available services, including crisis services and the recovery help line in telephone directories, public web sites, and other public places in easily accessible formats;

(2) Publish and disseminate brochures and other materials or methods for describing services and hours of operation that are appropriate for all people, including those who may be visually impaired, limited-English proficient, or unable to read; and

(3) Post and make information available to people regarding the behavioral health ombuds office consistent with WAC 182-538D-0262, and local advocacy organizations that may assist people in understanding their rights.

NEW SECTION

WAC 182-538D-0248 Behavioral health organizations—Governing body responsible for oversight. The behavioral health organization (BHO) must establish a governing body responsible for oversight of the BHO. The governing body must:

- (1) Be free from conflict of interest and all appearance of conflict of interest between personal, professional and fiduciary interests of a governing body member and the best interests of the BHO and the people it serves.
- (2) Have rules about:
 - (a) When a conflict of interest becomes evident;
 - (b) Not voting or joining a discussion when a conflict of interest is present; and
 - (c) When the governing body can assign the matter to others, such as staff members or advisory bodies.

NEW SECTION

WAC 182-538D-0252 Behavioral health organizations—Advisory board membership. (1) A behavioral health organization (BHO) must appoint advisory board members and maintain an advisory board in order to:

- (a) Promote active engagement with people with behavioral health disorders, their families, and behavioral health agencies; and
- (b) Solicit and use the advisory board members input to improve service delivery and outcome.
- (2) The BHO must appoint advisory board members and maintain an advisory board that:
 - (a) Broadly represents the demographic character of the service area;
 - (b) Is composed of at least fifty-one percent representation of one or more of the following:
 - (i) People with lived experience;
 - (ii) Parents or legal guardians of people with lived experience; or
 - (iii) Self-identified as people in recovery from a behavioral health disorder.
 - (c) Includes law enforcement representation; and
 - (d) Includes tribal representation, upon request of a tribe.
- (3) When the BHO is not a function of county government, the advisory board must include no more than four county elected officials.
- (4) The advisory board:
 - (a) May have members who are employees of subcontracted agencies, as long as there are written rules that address potential conflicts of interest.
 - (b) Has the discretion to set rules in order to meet the requirements of this section.
 - (c) Membership is limited to three years per term for time served, per each advisory board member. Multiple terms may be served by a member if the advisory board rules allow it.

(5) The advisory board independently reviews and provides comments to either the BHO, the BHO governing board, or both, on plans, budgets, and policies developed by the BHO to implement the requirements of this section, chapters 71.05, 71.24, 71.34 RCW, and applicable federal laws.

NEW SECTION

WAC 182-538D-0254 Behavioral health organizations—Voluntary inpatient services and involuntary evaluation and treatment services. A behavioral health organization (BHO) must develop and implement age and culturally competent behavioral health services that are consistent with chapters 70.96A, 71.24, 71.05, and 71.34 RCW.

- (1) For voluntary inpatient services, the BHO must develop and implement formal agreements with inpatient services funded by the BHO regarding:
 - (a) Referrals;
 - (b) Admissions; and
 - (c) Discharges.
- (2) For involuntary evaluation and treatment services, the BHO:
 - (a) Must ensure that people in their regional service area have access to involuntary inpatient care; and
 - (b) Is responsible for coordinating discharge planning with the treating inpatient facility.
- (3) The BHO must:
 - (a) Ensure periodic reviews of the evaluation and treatment service facilities consistent with BHO procedures and notify the appropriate authorities if it believes that a facility is not in compliance with applicable rules and laws.
 - (b) Authorize admissions into inpatient evaluation and treatment services for people from:
 - (i) State psychiatric hospitals:
 - (A) Western state hospital;
 - (B) Eastern state hospital; and
 - (C) The child study and treatment center.
 - (ii) Community hospitals.
 - (iii) Certified inpatient evaluation and treatment facilities licensed by the department of health as adult residential treatment facilities.
 - (iv) The children's long-term inpatient program (CLIP).
 - (c) Receive prior approval from the division of behavioral health and recovery (DBHR) in the form of a single bed certification for services to be provided to people on a ninety- or one hundred eighty-day community inpatient involuntary commitment order consistent with the exception criteria in WAC 246-341-1136.

NEW SECTION

WAC 182-538D-0256 Behavioral health organizations—Community support, residential, housing, and employment services. (1) **Community support services** as defined in WAC 182-538D-0200. A behavioral health organization (BHO) must:

- (a) Develop and coordinate age and culturally appropriate community support services that are consistent with chapters 71.05, 71.24, and 71.34 RCW to ensure that the mental health and substance use disorder services listed in chapter 246-341 WAC can be accessed by all eligible people in the

BHO's service area and are provided to eligible people directly, or by contract.

(b) Ensure prescreening determinations are conducted for providing community support services for people with mental illness who are being considered for placement in nursing facilities as required by RCW 71.24.025(8).

(2) **Residential services** as defined in WAC 182-538D-0200. A BHO must:

(a) Ensure active search and promotion of access to, and choice in, safe and affordable independent housing that is appropriate to the person's age, culture, and residential needs. This includes:

(i) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing; and

(ii) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan, including a full range of residential services as defined in RCW 71.24.025(23).

(b) Ensure that people in licensed residential facilities receive behavioral health services consistent with their individual service plan and are advised of their rights, including long-term care rights under chapter 70.129 RCW.

(3) **Housing services** as defined in WAC 182-538D-0200. A BHO must ensure active search and promotion of access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs. This includes:

(a) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing;

(b) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan; and

(c) Coordinating with public housing entities, homeless continuums of care, and affordable housing developers.

(4) **Employment services.** A BHO must coordinate with the health care authority or other local entities that support employment services to assure that people wanting to work are provided with recovery support-employment services under WAC 246-341-0720.

NEW SECTION

WAC 182-538D-0258 Behavioral health organizations—Administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act. A behavioral health organization (BHO) must establish policies and procedures for administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act, including investigation, detention, transportation, court-related, and other ser-

vices required by chapters 70.96A, 71.05 and 71.34 RCW. This includes:

(1) Ensuring that designated crisis responders (DCRs) perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 70.96A, 71.05 and 71.34 RCW.

(2) Documenting the person's compliance with the conditions of mental health less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed person for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety-day commitments and one hundred eighty-day commitments.

(b) Notifying the DCR if noncompliance with the less restrictive alternative order impairs the person sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

NEW SECTION

WAC 182-538D-0262 Behavioral health organizations—Behavioral health ombuds office. A behavioral health organization (BHO) must provide unencumbered access to and maintain the independence of the behavioral health ombuds service as set forth in the contract between the BHO and the division of behavioral health and recovery (DBHR). The BHO and DBHR must ensure the inclusion of representatives of client advocate organizations when revising the terms of the contract regarding the requirements of this section. Behavioral health ombuds members must be current consumers of the mental health or substance use disorder system, or past consumers or family members of past consumers. The BHO must maintain a behavioral health ombuds office that:

(1) Is responsive to the age and demographic character of the region and assists and advocates for people with resolving issues, grievances, and appeals at the lowest possible level;

(2) Is independent of BHO service providers;

(3) Supports people, family members, and other interested parties regarding issues, grievances, and appeals;

(4) Is accessible to people, including having a toll-free, independent phone line for access;

(5) Is able to access service sites and records relating to people with appropriate releases so that it can reach out to people and help to resolve issues, grievances, and appeals;

(6) Receives training and adheres to confidentiality consistent with this chapter and chapters 70.96A, 71.05, 71.24, and 70.02 RCW;

(7) Continues to be available to advocate and support people through the grievance, appeal and administrative hearing processes;

(8) Involves other people, at the person's request;

(9) Supports people in the pursuit of a formal resolution;

(10) If necessary, continues to assist the person through the administrative hearing process;

(11) Coordinates and collaborates with allied services to improve the effectiveness of advocacy and to reduce duplication when serving the same person;

(12) Provides information on grievances to DBHR and BHO quality strategy; and

(13) Provides reports and formalized recommendations at least biennially to DBHR and BHO advisory and governing boards, local consumer and family advocacy groups, the BHO quality review team, and the BHO provider network.

NEW SECTION

WAC 182-538D-0264 Behavioral health organizations—Quality strategy. A behavioral health organization (BHO) must implement a quality strategy for continuous quality improvement in the delivery of culturally competent mental health services. The BHO must submit a quality assurance and improvement plan to the division of behavioral health and recovery (DBHR). All changes to the quality assurance and improvement plan must be submitted to DBHR for approval prior to implementation. The plan must include all of the following:

(1) Roles, structures, functions and interrelationships of all the elements of the quality strategy including, but not limited to, the BHO governing board, clinical and management staff, advisory board, behavioral health ombuds service, and quality review teams.

(2) Procedures to ensure that quality assurance and improvement activities are effectively and efficiently carried out with clear management and clinical accountability, including methods to:

(a) Collect, analyze and display information regarding:

(i) The capacity to manage resources and services, including financial and cost information and compliance with statutes, regulations and contracts;

(ii) System performance indicators;

(iii) Quality and intensity of services;

(iv) Incorporation of feedback from people, allied service systems, community providers, the behavioral health ombuds office and quality review team;

(v) Clinical care and service usage including participant outcome measures; and

(vi) Recommendations and strategies for system and clinical care improvements, including information from exit interviews of people and providers;

(b) Monitor management information system data integrity;

(c) Monitor complaints, grievances and adverse incidents for people;

(d) Monitor contractors and to notify DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements;

(e) Immediately investigate and report allegations of fraud and abuse of the contractor or subcontractor to DBHR;

(f) Monitor delegated administrative activities;

(g) Identify necessary improvements;

(h) Interpret and communicate practice guidelines to providers;

(i) Implement change;

(j) Evaluate and report results;

(k) Demonstrate incorporation of all corrective actions to improve the system;

(l) Consider system improvements based on recommendations from all on-site monitoring, evaluation, accreditation, and certification reviews; and

(m) Review, update, and make the plan available to community stakeholders.

(3) Targeted improvement activities, including:

(a) Performance measures that are objective, measurable, and based on either current knowledge or best practice, or both, including at least those defined by DBHR in the contract with the BHO;

(b) An analysis of consumer care covering a representative sample of at least ten percent of consumers or five hundred consumers, whichever is smaller;

(c) Efficient use of human resources; and

(d) Efficient business practices.

NEW SECTION

WAC 182-538D-0266 Behavioral health organizations—Quality review teams. A behavioral health organization (BHO) must establish and maintain unencumbered access to and maintain the independence of a quality review team as described in this section and in the contract between the BHO and the division of behavioral health and recovery (DBHR). The quality review team must include people who currently receive or have in the past received behavioral health services, and may also include the family members of such people. The BHO must assure that quality review teams:

(1) Fairly and independently review the performance of the BHO and service providers in order to evaluate systemic issues as measured by objective indicators of participant outcomes in rehabilitation and recovery, including all of the following:

(a) Quality of care;

(b) The degree to which services are focused on the person and are age and culturally appropriate;

(c) The availability of alternatives to hospitalization, cross-system coordination and range of treatment options; and

(d) The effectiveness of the BHO's coordination with allied systems including, but not limited to, schools, state and local hospitals, jails and shelters.

(2) Have the authority to enter and monitor any behavioral health agency contracted with a BHO.

(3) Meet with interested people and family members, allied service providers, including state or community psychiatric hospitals, BHO contracted service providers, and people that represent the age and ethnic diversity of the BHO's service area to:

(a) Determine if services are accessible and address the needs of people based on sampled people's perception of services using a standard interview protocol. The protocol will query the sampled people regarding ease of accessing services, the degree to which services address medically necessary needs, and the benefit of the service received; and

(b) Work with interested people and other people, if requested by the person, service providers, the BHO, and DBHR to resolve identified problems.

(4) Provide reports and formalized recommendations at least biennially to DBHR, the behavioral health advisory committee and the BHO advisory and governing boards and ensure that input from the quality review team is integrated into the overall BHO quality strategy, behavioral health ombuds office services, local consumer and family advocacy groups, and provider network.

(5) Receive training in and adhere to applicable confidentiality standards.

NEW SECTION

WAC 182-538D-0268 Behavioral health organizations—Standards for contractors and subcontractors. A behavioral health organization (BHO) must not contract or subcontract for clinical services to be provided using public funds unless the contractor or subcontractor is licensed by the department of health for those services, or is individually licensed by the department of health as defined in chapter 18.57, 18.71, 18.83, or 18.79 RCW. The BHO must:

(1) Require and maintain documentation that contractors and subcontractors are licensed, certified, or registered in accordance with state and federal laws;

(2) Follow applicable requirements of the BHO contract with the division of behavioral health and recovery (DBHR);

(3) Demonstrate that it monitors contractors and subcontractors and notifies DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements; and

(4) Terminate its contract or subcontract with a provider if DBHR notifies the BHO of a provider's failure to attain or maintain licensure.

NEW SECTION

WAC 182-538D-0272 Behavioral health organizations—Operating as a behavioral health agency. A behavioral health organization (BHO) may operate as a behavioral health agency when the BHO:

(1) Meets the criteria in RCW 71.24.045(2) and chapters 70.96A and 71.24 RCW; and

(2) Maintains a current license as a behavioral health agency from the department of health.

MENTAL HEALTH PREPAID HEALTH PLANS

NEW SECTION

WAC 182-538D-0370 Behavioral health organization managed care organization—Minimum standards. To be eligible to contract with the division of behavioral health and recovery (DBHR), the behavioral health organization (BHO) managed care organization (MCO) must comply with all applicable local, state, and federal rules and laws. The BHO MCO must:

(1) Provide documentation of a population base of sixty thousand medicaid eligible people covered within the service area or receive approval from DBHR based on submittal of an actuarially sound risk management profile;

(2) If the BHO is not a county-based organization, the BHO must maintain licensure by the Washington state office

of the insurance commissioner as a health care service contractor under chapter 48.44 RCW;

(3) Provide medically necessary behavioral health services that are age and culturally appropriate for all medicaid clients in the service area within a capitated rate;

(4) Demonstrate working partnerships with tribal authorities for the delivery of services that blend with tribal values, beliefs and culture;

(5) Develop and maintain written subcontracts that clearly recognize that legal responsibility for administration of the service delivery system remains with the BHO MCO, as identified in the contract with DBHR;

(6) Retain responsibility to ensure that applicable standards of this chapter, other state rules, and federal laws are met even when it delegates duties to subcontractors; and

(7) Ensure the protection of individual and family rights as described in chapters 70.96A, 71.05 and 71.34 RCW.

NEW SECTION

WAC 182-538D-0375 Behavioral health organization managed care plan—Utilization management. Utilization management is the way the behavioral health organization (BHO) managed care organization (MCO) authorizes or denies substance use disorder treatment or mental health services, monitors services, and follows the level of care guidelines. To demonstrate the impact on access to care of adequate quality, a BHO must provide utilization management of the behavioral health rehabilitation services under 42 C.F.R. Sec. 440.130(d) that is independent of service providers. This process must:

(1) Provide effective and efficient management of resources;

(2) Assure capacity sufficient to deliver appropriate quality and intensity of services to people without a wait list consistent with the contract with the division of behavioral health and recovery (DBHR);

(3) Plan, coordinate, and authorize community support services;

(4) Ensure that services are provided according to the individual service plan;

(5) Ensure assessment and monitoring processes are in place by which service delivery capacity responds to changing needs of the community and the person;

(6) Develop, implement, and enforce written level of care guidelines for admissions, placements, transfers and discharges into and out of services including:

(a) A clear process for the BHO MCO's role in the decision-making process about admission and continuing stay at various levels is available in language that is clearly understood by all parties involved in a person's care, including laypersons;

(b) Criteria for admission into various levels of care, including community support, inpatient and residential services that are clear and concrete;

(c) Methods to ensure that services are individualized to meet the needs of all people served, including methods that address different ages, cultures, languages, civil commitment status, physical abilities, and unique service needs; and

(d) Assurance that the BHO MCO retains a sufficiently strong and regular oversight role to assure decisions are being made appropriately, to the extent authorization of care at any level of care or at continuing stay determinations is delegated.

(7) Collect data that measures the effectiveness of the criteria in ensuring that all eligible people get services that are appropriate to their needs; and

(8) Report to DBHR any knowledge it gains that the BHO MCO or behavioral health service provider is not in compliance with a state or federal rule or law.

NEW SECTION

WAC 182-538D-0380 Behavioral health organization managed care organization—Choice of primary provider. (1) The behavioral health organization (BHO) managed care organization (MCO) must:

(a) Ensure that each person receiving nonemergency behavioral health rehabilitation services has a primary provider who is responsible to carry out the individual service plan; and

(b) Allow people, parents of people age twelve and younger, and guardians of people of all ages to select a primary provider from the available primary provider staff within the BHO MCO.

(2) For a person with an assigned case manager, the case manager is the primary provider.

(3) If the person does not select a primary provider, the BHO MCO or its designee must assign a primary provider not later than fifteen working days after the person requests services.

(4) The BHO MCO or its designee must allow a person to change primary providers at any time for any reason. The person must notify the BHO MCO or its designee of the request for a change, and inform the MCO of the name of the new primary provider.

NEW SECTION

WAC 182-538D-0385 Behavioral health organization managed care organization—Behavioral health screening for children. The behavioral health organization (BHO) managed care organization (MCO) is responsible for conducting behavioral health screening and treatment for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program. This includes:

(1) Providing resource management services for children eligible under the EPSDT program as specified in contract with the division of behavioral health and recovery; and

(2) Developing and maintaining an oversight committee for the coordination of the EPSDT program that must include representation from parents of medicaid-eligible children.

INPATIENT AND EVALUATION TREATMENT FACILITIES

NEW SECTION

WAC 182-538D-0526 Single bed certification. At the discretion of the health care authority, an exception may be granted to allow timely and appropriate treatment in a facility that is not certified under chapter 246-341 WAC to a person on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment to a person on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to a person who has been revoked from a less restrictive alternative order or conditional release. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under chapter 246-341 WAC until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The behavioral health organization (BHO) or (BHO) managed care organization (MCO) or a designee must submit a written request for a single bed certification to the health care authority. In the case of a child, the facility must submit the written request to the health care authority. The request must be submitted and approved by the health care authority for a facility to accept a person for timely and appropriate treatment under this section. If the health care authority has assumed the duties assigned to a nonparticipating BHO, an entity designated by the health care authority will perform the functions described in this section.

(2) A single bed certification may be issued to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for a person:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the person for whom the single bed certification is sought; and

(b) The request for single bed certification describes why the person meets at least one of the following criteria:

(i) The person is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the person's individual treatment needs;

(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or

(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, or a hospital that is willing and able to provide timely and appropriate mental health treatment, or a psychiatric hospital, and the single bed certification will apply only to that facility.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certifi-

cation, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, and licensed physicians are available for consultation and communication with both the person and the direct patient care staff;

(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the person. If the person is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, or collaboration with members of the person's support system as identified by the person.

(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, has had contact with each involuntarily detained person at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the person is appropriate for release from involuntary commitment to accept treatment on a voluntary basis.

(c) Have standards for administration and monitoring of medication, including psychiatric medications. A person has a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a person requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section, a single bed certification may be issued to that facility for the person as follows:

(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter, a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section;

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the BHO or BHO MCO assigns a mental health professional to provide the person appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the person is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the person's mental health treatment needs until the person is medically stable and the BHO, BHO MCO, or a designee identifies an appropriate facility for the person that is one of the following:

(A) The hospital providing services;

(B) A facility that is certified as an evaluation and treatment (E&T) facility; or

(C) A facility that can meet the person's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated, the requirements in (c) of this subsection do not apply. When the person is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.

(5) The health care authority makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal or state law.

(6) A person who receives services under a single bed certification under this section must be transferred:

(a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment; or

(b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.

(7) The health care authority may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the health care authority determines that the violation places people in imminent jeopardy, immediate revocation of this exception can occur.

(8) The BHO or BHO MCO retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(9) Neither a person nor a facility has fair hearing rights as defined under chapter 182-526 WAC regarding single bed certification decisions by the health care authority staff.

DEPARTMENT OF CORRECTIONS ACCESS TO CONFIDENTIAL MENTAL HEALTH INFORMATION

NEW SECTION

WAC 182-538D-0600 Purpose. In order to enhance and facilitate the department of corrections' ability to carry out its responsibility of planning and ensuring community protection, mental health records and information, as defined in this section, that are otherwise confidential shall be released by any mental health service provider to the department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office as authorized in RCW 71.05.445. Department of corrections personnel must use records only for the stated purpose and must assure that records remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

NEW SECTION

WAC 182-538D-0620 Scope. Many records and reports are updated on a regular or as needed basis. The scope of the records and reports to be released to the department of corrections are dependent upon the reason for the request.

(1) For the purpose of a presentence investigation release only the most recently completed or received records of those completed or received within the twenty-four-month period before the date of the request; or

(2) For all other purposes including risk assessments release all versions of records and reports that were completed or received within the ten year period prior to the date of the request that are still available.

NEW SECTION

WAC 182-538D-0630 Time frame. The mental health service provider will provide the requested relevant records, reports and information to the authorized department of corrections person in a timely manner, according to the purpose of the request:

(1) Presentence investigation - Within seven days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the seven-day-period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(2) All other purposes - Within thirty days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the thirty-day period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(3) Emergent situation requests - When an offender subject has failed to report for department of corrections supervision or in an emergent situation that poses a significant risk to the public, the mental health provider shall upon request, release information related to mental health services delivered to the offender and, if known, information regarding the whereabouts of the offender. Requests if oral must be subsequently confirmed in writing the next working day, which includes email or facsimile so long as the requesting person at the department of corrections is clearly defined. The request must specify the information being requested. Disclosure of the information requested does not require the consent of consumer.

Information that can be released is limited to:

(a) A statement as to whether the offender is or is not being treated by the mental health services provider; and

(b) Address or information about the location or whereabouts of the offender.

NEW SECTION

WAC 182-538D-0640 Written requests. The written request for relevant records, reports and information must include:

(1) Verification that the person for whom records, reports and information are being requested is under the authority of the department of corrections, per chapter 9.94A RCW, and the expiration date of that authority;

(2) Sufficient information to identify the person for whom records, reports and information are being requested including name and other identifying data;

(3) Specification as to which records and reports are being requested and the purpose for the request;

(4) Specification as to what relevant information is requested and the purpose for the request;

(5) Identification of the department of corrections person to whom the records, reports and information shall be sent, including the person's name, title and address;

(6) Name, title and signature of the requestor and date of the request.

BEHAVIORAL HEALTHSERVICES- ADMINISTRATIVE REQUIREMENTS

NEW SECTION

WAC 182-538D-0654 How people may express concern about their rights, services, or treatment. (1) People who apply for, are eligible for, or receive behavioral health services authorized by a behavioral health organization (BHO), may access the BHO's grievance and appeal system to express concern about their rights, services, or treatment.

(2) The BHO's grievance and appeal system includes:

(a) A grievance process as described in WAC 182-538D-0660;

(b) An appeal process as described in WAC 182-538D-0670; and

(c) Access to administrative hearings as described in WAC 182-538D-0675.

(3) People must exhaust the appeal process before they have access to an administrative hearing.

(4) People may also use the free and confidential ombuds services under WAC 182-538D-0262 through the BHO that contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and behavioral health agencies and are offered to people at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

(5) In handling grievances and appeals, each BHO and behavioral health agency must give people any reasonable assistance in completing forms and taking other procedural steps related to grievance or appeal. This includes, but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

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.

NEW SECTION

WAC 182-538D-0655 Grievance and appeal system and administrative hearings—Definitions. The terms and definitions in this section apply to the behavioral health organization (BHO) grievance and appeal system and administrative hearing rules. Other definitions that apply to behavioral health services may be found at WAC 182-538D-0200.

(1) "Administrative hearing" means a proceeding before an administrative law judge to review an adverse benefit determination or a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) "Adverse benefit determination" means, in the case of medicaid services administered by the BHO, any one or more of the following:

(a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state;

(e) The failure of a BHO to act within the grievance and appeal system time frames as provided in WAC 182-538D-0660 through 182-538D-0670 regarding the standard resolution of grievances and appeals;

(f) For a resident of a rural area with only one BHO, the denial of a person's request to exercise the right to obtain services outside the network; or

(g) The denial of a person's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

(3) "Appeal" means a review by a behavioral health organization (BHO) of an adverse benefit determination, as defined in this section.

(4) "Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, a person's right to dispute an extension of time proposed by the BHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a behavioral health provider or employee, and failure to respect the person's rights regardless of whether a specific action is requested by the person.

(5) "Grievance and appeal system" means the processes a BHO implements to handle appeals of adverse benefit determinations and grievances as well as the processes to collect and track information about them. The BHO must establish the grievance and appeal system and meet the requirements of 42 C.F.R. Sec. 438, Subpart F (2017).

(6) "Person" means a person who applies for, is eligible for, or receives BHO-authorized behavioral health services from an agency licensed by the department of health as a behavioral health agency. For the purposes of accessing the grievance and appeal system and the administrative hearing

process, when another person is acting on a person's behalf, the definition of a person also includes any of the following:

(a) In the case of a minor, the person's parent or, if applicable, the person's custodial parent;

(b) The person's legal guardian;

(c) The person's representative if the person gives written consent;

(d) The person's behavioral health provider if the person gives written consent, except that the behavioral health provider cannot request continuation of benefits on the person's behalf.

(7) "Notice of adverse benefit determination" is a written notice a BHO provides to a person to communicate an adverse benefit determination.

(8) "Notice of determination" means a written notice that must be provided to a person to communicate denial or limited authorization of a nonmedicaid service offered by the BHO. A notice of determination must contain the following:

(a) The reason for denial or offering of alternative services;

(b) A description of alternative services, if available; and

(c) The right to request an administrative hearing, how to request a hearing, and the time frames for requesting a hearing as identified in WAC 182-538D-0675.

NEW SECTION

WAC 182-538D-0660 Filing a grievance. (1) A person or person's representative may file a grievance to express dissatisfaction in person, orally, or in writing about any matter other than an adverse benefit determination, as defined in WAC 182-538D-0655, to:

(a) The behavioral health agency providing the behavioral health services; or

(b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If a person receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the person's grievances.

(3) There is no time limit to file a grievance.

(4) The ombuds may assist the person in resolving the grievance at the lowest possible level.

(5) **Filing a grievance with a behavioral health agency.** If a person first files a grievance with the behavioral health agency and the person is not satisfied with the agency's written decision on the grievance, or if the person does not receive a copy of that decision from the agency within the time required under subsection (7) of this section, the person may then choose to file the grievance with the BHO. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(6) **Filing a grievance with a BHO.** If the person first files a grievance with the BHO and not the agency, and the person is not satisfied with the BHO's written decision on the grievance, the person cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance. The BHO's written

decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(7) When a person files a grievance, the behavioral health agency or BHO that receives the grievance must:

(a) Acknowledge the receipt of the grievance in writing within five business days;

(b) Investigate the grievance;

(c) At the person's request, give the person reasonable assistance in taking any procedural steps;

(d) Inform the person about ombuds services and how to access these services;

(e) Apply the rules in subsection (8) of this section; and

(f) Send the person who filed the grievance a written notice describing the decision no longer than ninety days from the date the behavioral health agency or BHO receives the grievance.

(8) The behavioral health agency or BHO that receives the grievance must ensure all of the following:

(a) Other people are allowed to participate in the grievance process, if the person chooses;

(b) That a grievance is resolved even if the person is no longer receiving behavioral health services;

(c) That the people who make decisions on a grievance:

(i) Were neither involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of the grievance;

(ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding a grievance concerning denial of an expedited resolution of an appeal or a grievance that involves any clinical issues; and

(iii) Consider all comments, documents, records, and other information submitted by the person or the person's representative.

(d) That the person and, if applicable, the person's representative, receives a written notice containing the decision no later than ninety days from the date the agency or BHO receives a grievance. This time frame can be extended up to an additional fourteen days:

(i) If requested by the person or the person's representative; or

(ii) By the agency or BHO when additional information is needed and the agency or BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and the added time is in the person's interest. The BHO must:

(A) Make reasonable efforts to give the person prompt oral notice of the delay; and

(B) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(e) That the written notice includes the resolution of the grievance, the reason for the decision, and the date the decision was made and is in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Is written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

(f) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are:

(i) Kept for a period of no less than ten years after the completion of the grievance process;

(ii) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

(iii) Kept in confidential files separate from the person's clinical record;

(iv) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the grievance; and

(g) Are accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the grievance;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the grievance, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the grievance was filed.

(9) When the BHO does not act within the grievance process time frames described in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

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

NEW SECTION

WAC 182-538D-0665 Notice of adverse benefit determination. (1) A behavioral health organization's (BHO's) notice of adverse benefit determination provided to a person must be in writing and in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(a) Be written in the person's non-English language, if applicable;

(b) Contains the BHO's toll-free and TTY/TDY telephone number; and

(c) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language, TTY/TDY telephone services, and alternative formats to include large print and Braille.

(2) The notice of adverse benefit determination must, at a minimum, explain the following:

(a) The adverse benefit determination the BHO has made or intends to make;

(b) The reasons for the adverse benefit determination, including citation of the rule(s) and criteria used for the basis of the decision;

(c) The right of the person to be provided reasonable access to and copies of all documents, records, and other information relevant to the person's adverse benefit determination upon request and free of charge;

(d) The person's right to file an appeal of the adverse benefit determination with the BHO, including information on exhausting the BHO's one level of appeal and the person's right to request an administrative hearing;

(e) The circumstances under which an expedited appeal process is available and how to request it; and

(f) The person's right to receive behavioral health services while an appeal is pending, how to make the request, and that the person may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision in the notice of adverse benefit determination.

(3) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required time frame, or fails to provide services in a timely manner, it is considered an adverse benefit determination. In these cases, the BHO sends a formal notice of adverse benefit determination, which includes the person's right to request an administrative hearing. When the BHO does not act within the grievance and appeal system time frames as identified within this chapter, it is considered exhaustion of the appeals process and the person has a right to request an administrative hearing.

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

NEW SECTION

WAC 182-538D-0670 Filing an appeal. (1) A person may file an appeal to ask the behavioral health organization (BHO) to review an adverse benefit determination that the BHO has communicated on a written notice of adverse benefit determination as defined in WAC 182-538D-0655. A person's representative may appeal an adverse benefit determination with the person's written consent. If a written notice of adverse benefit determination was not received, an appeal may still be filed.

(2) The person requesting review of an adverse benefit determination must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) Appeals may be:

(a) Standard as described in subsections (6) and (7) of this section; or

(b) Expedited if the criteria in subsection (8) of this section are met.

(4) The appeal process must:

(a) Provide a person a reasonable opportunity to present evidence and make legal and factual arguments in person as well as in writing. The BHO must inform the person of the limited time available.

(b) Provide the person opportunity, free of charge and sufficiently in advance to examine the person's clinical record, including examining new or additional evidence, medical records, and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

(i) The person, the person's representative, or both; or

(ii) The legal representative of a deceased person's estate.

(5) The BHO must ensure that the people who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of appeal;

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding an appeal of an adverse benefit determination concerning medical necessity or an appeal that involves any clinical issues; and

(c) Consider all comments, documents, records, and other information submitted by the person regardless of whether the information was considered in the initial review.

(6) **Standard appeals for adverse benefit determination - Continued services not requested.** A person who disagrees with a decision communicated on a notice of adverse benefit determination may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must file the appeal within sixty days from the date on the notice of adverse benefit determination.

(b) The BHO must confirm receipt of the appeal in writing within five business days.

(c) The BHO must send the person a written notice of the resolution as expeditiously as the person's health condition requires, and no longer than thirty days from the day the BHO received the appeal. This time frame may be extended up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. The BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay; and

(ii) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(d) The written notice of the resolution must include all the information listed in subsection (9) of this section.

(7) **Standard appeals for termination, suspension, or reduction of previously authorized services - Continued services requested.** A person who receives a notice of

adverse benefit determination from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must:

(i) File the appeal with the BHO on or before the later of the following:

(A) Within ten days of the date on the notice of adverse benefit determination; or

(B) The intended effective date of the BHO's proposed adverse benefit determination; and

(ii) Request continuation of services.

(b) The BHO must:

(i) Confirm receipt of the appeal and the request for continued services with the person orally or in writing within five business days;

(ii) Send a notice in writing that follows up on any oral confirmation made; and

(iii) Include in the notice that if the appeal decision is not in favor of the person, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

(c) The BHO's written notice of the resolution must contain all of the information listed in subsection (9) of this section.

(8) **Expedited appeal process.** If a person or the person's behavioral health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal may be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the time frame for standard resolutions under subsection (6) or (7) of this section, and make reasonable efforts to give the person prompt oral notice of the denial and follow up within two days with a written notice.

(a) Both of the following apply to expedited appeal requests:

(i) The adverse benefit determination must be for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services;

(ii) The expedited appeal must be filed with the BHO, either orally or in writing and within:

(A) Ten days of the BHO's mailing the written notice of adverse benefit determination or the intended effective date of the BHO's proposed adverse benefit determination, if the person is requesting continued benefits; or

(B) Sixty days from the date on the BHO's written notice of adverse benefit determination if the person is not requesting continued benefits.

(b) The BHO must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the person a written notice of the resolution no longer than seventy-two hours after receiving the request for an expedited appeal.

(c) The BHO may extend the time frames up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. In this case the BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay;

(ii) Within two days give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision; and

(iii) Resolve the appeal as expeditiously as the person's health condition requires and no later than the date the extension expires.

(d) The BHO must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution or who supports a person's appeal.

(9) The BHO's written notice of the resolution containing the decision on a standard appeal or expedited appeal must:

(a) Clearly state the BHO's decision on the appeal, the reason for the decision, and the date the decision was made;

(b) Inform the person of the right to an administrative hearing if the person disagrees with the decision, how to request a hearing, and the following time frames for requesting a hearing:

(i) Within ten days from the date on the notice of the resolution if the person is asking that services be continued pending the outcome of the hearing or if the person is asking for an expedited hearing;

(ii) Within one hundred twenty days from the date on the notice of the resolution if the person is not asking for continued services.

(c) Be in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Be written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

(10) When the BHO does not act within the appeal process time frames explained in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(11) **Duration of continued services during the appeal process.** When a person has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO must ensure the services are continued until one of the following occurs:

(a) The person withdraws the appeal; or

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the person and the person does not request an administrative hearing within ten days from the date the BHO mails the notice; see WAC 182-538D-0675, administrative hearings, for rules on duration of continued services during the administrative hearing process.

(12) **Reversal of an adverse benefit determination.** If the final written notice of the resolution of the appeal or administrative hearing reverses the adverse benefit determination, the BHO must authorize or provide the behavioral health service(s) no later than seventy-two hours from the date it receives notice of the adverse benefit determination being overturned.

(13) **Recovery of the cost of behavioral health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the appeal was pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741 (5)(g).

(14) **Recordkeeping and maintenance of appeals.** The BHO must ensure that full records of all appeals and materials received and compiled in the course of processing and attempting to resolve appeals are:

(a) Kept for a period of no less than ten years after the completion of the appeal process;

(b) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

(c) Kept in confidential files separate from the person's clinical record;

(d) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the appeal; and

(e) Accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the appeal;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the appeal, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the appeal was filed.

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

NEW SECTION

WAC 182-538D-0675 Administrative hearings. (1) An administrative hearing is a proceeding before an administrative law judge (ALJ) that gives a person, as defined in WAC 182-538D-0655, an opportunity to be heard in disputes

about adverse benefit determinations or a decision of a behavioral health organization (BHO) to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) A person may request an administrative hearing for the following reasons:

(a) After a person receives notice that the BHO upheld an adverse benefit determination;

(b) After a person receives a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination; or

(c) If the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670. In this case, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(3) A person who requests an administrative hearing must do so within one of the following time frames:

(a) If continued services are not requested, a hearing must be requested within one hundred twenty days from the date on the written notice of the resolution received from the BHO at the end of the appeal process or one hundred twenty days from the date on the notice of determination.

(b) If continued medicaid services are requested pending the outcome of the administrative hearing, all of the following apply:

(i) The person appealed a decision on the notice of adverse benefit determination for termination, suspension, or reduction of the person's behavioral health services;

(ii) The person appealed the adverse benefit determination and the BHO upheld the adverse benefit determination; and

(iii) The person requests an administrative hearing and continued behavioral health services within ten days of the date on the written notification of the resolution.

(c) The BHO is not obligated to continue nonmedicaid services pending the result of an administrative hearing when available resources are exhausted, since services cannot be authorized without funding regardless of medical necessity.

(4) If a person or the person's behavioral health provider believes that the time taken for a standard administrative hearing could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited hearing may be requested. Subsection (3)(b) and (c) of this section apply if continued behavioral health services are requested.

(5) The BHO's failure to issue an appeal decision in writing within the time frames in WAC 182-538D-0670 constitutes exhaustion of the appeal process and the person may request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO must continue the person's behavioral health treatment services during the administrative hearing process until one of the following occurs:

(a) The person withdraws the hearing request;

(b) The administrative law judge issues a hearing decision adverse to the person.

(7) If the administrative hearing decision is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the hearing was

pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request.

(8) Administrative hearings include adjudicative proceedings and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 182 WAC, chapter 10-08 WAC, or other law. Chapters 34.05 RCW and 182-526 WAC govern cases where a person has an issue involving a service that is funded by medicaid or is not funded by medicaid.

NEW SECTION

WAC 182-538D-0680 A person's rights specific to medicaid recipients. (1) Medicaid recipients have general rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(a) General rights that apply to all people, regardless of whether a person is or is not a medicaid recipient, include:

(i) All applicable statutory and constitutional rights;

(ii) The participant rights provided under WAC 182-538D-0600; and

(iii) Applicable necessary supplemental accommodation services.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary behavioral health services, consistent with access to care standards adopted by the health care authority in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA's) division of behavioral health and recovery (DBHR) web site.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of behavioral health providers in your BHO.

(iii) Receive information about the structure and operation of the BHO.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive poststabilization services after you receive emergency or urgent care or crisis services that result in admission to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

(x) Refuse any proposed treatment.

(xi) Receive care that does not discriminate against you.

(xii) Be free of any sexual exploitation or harassment.

(xiii) Receive an explanation of all medications prescribed and possible side effects.

(xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a behavioral health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change behavioral health care providers at any time for any reason.

(xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Receive medically necessary services in accordance with the early and periodic screening, diagnosis and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy, and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint used as a means of coercion, discipline, convenience, or retaliation.

(xxviii) Receive a second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. Sec. 438.206(b)(3) (2015).

(xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.

(xxx) File a grievance with the behavioral health agency or BHO if you are not satisfied with a service.

(xxxi) Receive a notice of adverse benefit determination so that you may appeal any decision by the BHO that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service, or that denies payment for a service, in whole or in part.

(xxxii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state.

(xxxiii) Request an administrative (fair) hearing if your appeal is not resolved in your favor or if the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670.

(xxxiv) Request services by the behavioral health ombuds office to help you file a grievance or appeal or request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) that provides DBHR-certified mental health services, DBHR-certified substance use disorder services, or both, must ensure the medicaid rights described in subsection (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.

WSR 19-13-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-124—Filed June 14, 2019, 11:44 a.m., effective June 17, 2019]

Effective Date of Rule: June 17, 2019.

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

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000B; and amending WAC 220-358-030.

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

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

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

Reasons for this Finding: Opens the 2019 tribal summer commercial fisheries while continuing previously planned select area commercial fisheries. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact actions of January 29 and March 28, April 16, May 8, and June 12, 2019. There is insufficient time to promulgate permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state

regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: June 14, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000C Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tribal platform hook and line fisheries:**(a) Dates:**

6:00 AM June 24 through 11:59 PM July 31 and only during days and times opened under tribal rules.

(b) Area:

Area defined in tribal/state MOUs/MOAs

(c) Gear:

Hook and line and/or platform gear identified in tribal rules

(d) Allowable sales:

Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes

(e) Miscellaneous:

24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-315 except that landings must be reported within 24-hours of completing the fish ticket.

(2) Blind Slough/Knappa Slough Select Area:**(a) Summer Season:**

Monday and Thursday nights (7 PM to 7 AM) from June 17 through June 28.

(b) Areas:

(i) The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barndse Road Bridge, and;

(ii) The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

Prior to May 6, the downstream (western) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(c) Gear: Gillnets.

(i) Winter season: 7-inch minimum mesh size restriction.

(ii) Spring and Summer seasons: 9 3/4-inch maximum mesh size restriction.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(d) Miscellaneous: Permanent transportation rules in effect. In accordance with WACs 220-352-040 and 220-301-010 commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

ate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) Allowable Possession: Salmon (except chum), white sturgeon, and shad. A maximum of four white sturgeon with a fork length of 44-50 inches fork length may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The four white sturgeon possession and sales limit includes all Select Area fisheries.

(4) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315)). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries.

(5) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-030(2)).

(6) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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 220-358-03000B Columbia River seasons below Bonneville (19-100)

WSR 19-13-062**EMERGENCY RULES****DEPARTMENT OF****CHILDREN, YOUTH, AND FAMILIES**

[Filed June 14, 2019, 1:07 p.m., effective June 15, 2019]

Effective Date of Rule: June 15, 2019.

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

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

Statutory Authority for Adoption: Chapters 43.216, 34.05 RCW.

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

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

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

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

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

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

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

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

Date Adopted: June 14, 2019.

Brenda Villarreal
Rules Coordinator

Chapter 110-03 WAC

HEARING RULES

NEW SECTION

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

(2) This chapter:

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

(b) Regulates all hearings involving DCYF.

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

(4) This chapter and any amendments to this chapter apply to cases pending before OAH or a review judge at the time of adoption unless the amendment or rule specifically

states otherwise. An amendment to this chapter does not require that issues already addressed by OAH or a review judge be readdressed in order to comply with the amendment, unless the amendment expressly says otherwise.

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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

(2) "Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an administrative proceeding resulting in an initial

order. The office of administrative hearings (OAH), which is an independent state agency, employs the ALJs.

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

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

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

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

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

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

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

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

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

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

(13) "Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location as provided in RCW 34.05.455.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

WAC 110-03-0030 Computing time for meeting deadlines in the hearing process. (1) When counting days to

determine when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

(a) There is no right to a hearing and dismiss the case; or

(b) There is a right to a hearing and proceed with the hearing.

NEW SECTION

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

(2) The hearing request must include:

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

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

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

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

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

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

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

NEW SECTION

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

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

(3) A party may file documents with OAH by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission, if the party also mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(4) A party cannot file documents by email.

NEW SECTION

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

(2) The address for the OAH is:

Office of Administrative Hearings

2420 Bristol Court S.W., 1st Floor

P.O. Box 42489

Olympia, WA 98504-2489

Phone: 360-407-2700

Fax: 360-664-8721.

NEW SECTION

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

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

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax, if the party also mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party cannot serve documents by email.

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

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

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States mail;

(c) Fax produces proof of transmission;

(d) A parcel is delivered to a commercial delivery service with charges prepaid; or

(e) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

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

(1) A sworn statement by the person who served the document;

(2) The certified mail receipt signed by the recipient;

(3) An affidavit or certificate of mailing;

(4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;

(5) Proof of fax transmission; or

(6) Acknowledgment by the party being served.

NEW SECTION

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

(a) Has limited-English proficiency; or

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

NEW SECTION

WAC 110-03-0150 Requirements that apply to decisions involving limited-English-speaking parties. (1) When an interpreter is used at a hearing, the administrative law judge (ALJ) must explain on the record that decisions are written in English and that the office of administrative hearings (OAH) will provide an interpreter for an oral translation of the decision at no cost to the party needing interpretation services.

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

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

NEW SECTION

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

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

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

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

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

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

(e) The date of the hearing request.

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

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

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

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

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

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

(4) If the hearing is scheduled as:

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

(c) Identify accommodation and safety issues;

(d) Agree to postpone the hearing;

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

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

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

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

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

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

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

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

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

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

NEW SECTION

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

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

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

(c) Any agreements reached.

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

WAC 110-03-0220 Challenges to validity of DCYF rules. (1) Neither an ALJ nor a BOA review judge may

decide that a DCYF rule is invalid or unenforceable. Only a court may decide this issue.

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

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

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

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

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

NEW SECTION

WAC 110-03-0260 Orders of dismissal and default.

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

NEW SECTION

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

NEW SECTION

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

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

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

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

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

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

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

(a) Legal authority; and

(b) Affidavits or declarations signed under penalty of perjury.

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

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

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

(7) Upon receipt of a motion for a stay, the ALJ must schedule a hearing on the motion, not less than seven days

from the date the request is received by the office of administrative hearings.

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

(5) All hearings must be recorded.

NEW SECTION

WAC 110-03-0310 Authority of the administrative law judge. (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing. The ALJ's authority is limited to determining whether the sanction imposed or action taken by the department was warranted or justified under the evidence presented during the

hearing. The ALJ does not have authority to substitute or impose an alternative sanction, remedy, or action.

- (2) As needed, the ALJ may:
 - (a) Administer oaths and affirmations;
 - (b) Determine the order for presenting evidence;
 - (c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;
 - (d) Rule on objections, motions, and other procedural matters;
 - (e) Rule on motions for summary judgment;
 - (f) Rule on offers of proof and admit relevant evidence;
 - (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
 - (h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
 - (i) Request additional exhibits or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;
 - (j) Take official notice of facts pursuant to RCW 34.05.-452(5);
 - (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
 - (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
 - (m) Issue an order of default pursuant to RCW 34.05.-440;
 - (n) Hold prehearing conferences;
 - (o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;
 - (p) Decide whether a party has a right to a hearing;
 - (q) Permit and regulate the taking of discovery;
 - (r) Consider granting a stay if authorized by law or DCYF rule; and
 - (s) Take any other action necessary and authorized by any applicable statute or rule.
- (3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for the hearing if they involve common issues or parties.
- (4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that the waiver:
 - (a) Is necessary to avoid manifest injustice to the unrepresented party; and
 - (b) Would not prejudice any other party.
- (5) The ALJ must make findings of fact based on the preponderance of the evidence standard, unless otherwise required by law.
- (6) The ALJ's authority is limited to those powers granted by statute or rule. The ALJ has no inherent or common law powers.

NEW SECTION

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

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

NEW SECTION

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

- (2) Evidence may include all or parts of original documents or copies of the originals.
- (3) If a witness cannot appear, a party may offer as evidence statements signed by the witness that are under oath or affirmation.
- (4) The ALJ may give more weight to testimony that is subject to cross-examination by the other parties.
- (5) The ALJ's decision will only be based on admissible evidence.

NEW SECTION

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

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

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

NEW SECTION

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

(2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.

(3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.

(4) If a witness refuses to answer any question ruled proper by the ALJ, the ALJ may reject all of the related testimony of that witness.

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

WAC 110-03-0380 Judicial notice. (1) Judicial notice is evidence that includes facts or standards that are generally

recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code or standard of practice.

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

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

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

NEW SECTION

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

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

(3) Witnesses may include:

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

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

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

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

NEW SECTION

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

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

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

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

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

(i) Serving a subpoena;

(ii) Complying with a subpoena; and

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

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

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

NEW SECTION

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

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

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

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

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

- (a) Who was served with the subpoena;
- (b) When the subpoena was served;
- (c) Where the subpoena was served; and
- (d) The name, age, and address of the person who served the subpoena.

NEW SECTION

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

- (a) Must affirm or take an oath to testify truthfully during the hearing;
- (b) May testify in person, or by telephone if approved by the ALJ;
- (c) May request interpreters from OAH at no cost to the parties;
- (d) May be subpoenaed and ordered to appear according to WAC 110-03-0400.

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

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

(4) The ALJ may also question witnesses.

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

NEW SECTION

WAC 110-03-0470 Contents of the hearing record. (1) The administrative law judge must produce a complete official record of the proceedings.

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

- (a) Notice of all proceedings;
- (b) Any prehearing orders;
- (c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
- (d) Evidence received or considered;
- (e) A statement of matters officially noticed;
- (f) Offers of proof, objections, and any resulting rulings;
- (g) Proposed findings, requested orders and exceptions;
- (h) A complete audio recording of the entire hearing, together with any transcript of the hearing;
- (i) Any final order, initial order, or order on reconsideration; and
- (j) Matters placed on the record after an ex parte communication.

NEW SECTION

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

- (1) Identify the hearing decision as a DCYF case;
- (2) List the name and docket number of the case and the names of all parties and representatives;
- (3) Find the specific facts determined to exist by the ALJ, based on the hearing record, and relied on by the ALJ in resolving the dispute;
- (4) Explain why evidence is credible when the facts or conduct of a witness is in question;
- (5) State the law that applies to the dispute;
- (6) Apply the law to the facts of the case in the conclusions of law;
- (7) Discuss the reasons for the decision based on the facts and the law;
- (8) State the result;
- (9) Explain how to request corrections to the initial order or how to request a petition for review by the BOA and provide deadlines for such requests;
- (10) State the date the decision becomes final; and
- (11) Include any other information required by law or DCYF program rules.

NEW SECTION

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

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

(4) Before deciding if the initial order should be affirmed, reversed, or remanded for further proceedings the BOA review judge will consider the request, the initial order, and record.

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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

(a) Write a reconsideration decision; or

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

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

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

NEW SECTION

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

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

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

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

The mailing address of the secretary is:

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

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

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

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

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

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

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

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

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

WSR 19-13-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-123—Filed June 14, 2019, 1:46 p.m., effective June 24, 2019, 6:00 a.m.]

Effective Date of Rule: June 24, 2019, 6:00 a.m.

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

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

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

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

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

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

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court

order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: June 14, 2019.

Kelly Susewind
Director

NEW SECTION

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

(1) Open Areas: Zone 6 tributary fisheries

(a) Season: Beginning 6:00 AM June 24 until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members

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

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

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

(a) Season: 6 AM Monday, June 24 to 6 PM Wednesday June 26

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be sold,

but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

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

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

(a) Season: 6:00 AM June 24 through 11:59 PM July 31, 2019

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 24, 2019:

WAC 220-359-02000G Columbia River salmon seasons above Bonneville Dam. (19-49)

WSR 19-13-065

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-126—Filed June 14, 2019, 3:25 p.m., effective June 14, 2019, 3:25 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. Coast Salmon Management and

Catch Reporting Areas 3 and 4 are projected to reach the sub-area Chinook quota by June 19. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 14, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-3000Q Coastal salmon troll seasons—Commercial. Notwithstanding the provisions of WAC 220-354-300, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1 and 2 open:

Immediately through June 28, 2019.

(2) Salmon Management and Catch Reporting Areas 3 and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

Immediately through June 19, 2019

(3) In Washington Catch Reporting Areas 1, 3 and 4, landing and possession limit of 50 Chinook per vessel per landing week, defined as Thursday through Wednesday.

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

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

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

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

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

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-354-300000P Coastal salmon troll seasons—Commercial. (19-83)

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-354-300000P is probably intended to be WAC 220-354-300000P.

WSR 19-13-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-128—Filed June 17, 2019, 5:01 p.m., effective June 17, 2019, 5:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the halibut fishery.

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

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

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

Reasons for this Finding: This rule is needed to add additional fishing days to the 2019 halibut season for Catch Record Card Areas 3 and 4. Sufficient quota remains to open additional days in these areas. Adding these days will provide additional angling opportunity. This rule is in line with federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and the interim final rule adopted by the National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 17, 2019.

Kelly Susewind
Director

NEW SECTION

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

(1) Catch Record Card Area 1:

(a) Open Thursday June 20.

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

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

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

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

(a) Open seven days per week.

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

(3) Catch Record Card Area 2:

(a) Open Thursday June 20.

(b) It is unlawful to fish for or possess lingcod, seaward of line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain lingcod on days open during the primary halibut season seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°52.94'N. lat., 124°22.58'W. long.

46°44.18'N. lat., 124°18.00'W. long.

46°38.17'N. lat., 124°15.88'W. long.

(4) Card Areas 3 and 4:

(a) Open Thursday, June 20; Saturday, June 22; Thursday, June 27; Saturday, June 29.

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

Beginning at 48°18'N., 125°18'W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonilla-Tatoosh Line); effective June 1: it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

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

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

(5) Catch Record Card Area 5 through 10:

(a) Open Thursday, June 20; Thursday June 27; Saturday, June 22; and, Saturday, June 29.

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

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

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

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

(9) Annual halibut limit is four.

(10) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000T Halibut—Seasons—Daily and possession limits. (19-115)

**WSR 19-13-087
 EMERGENCY RULES
 DEPARTMENT OF
 FISH AND WILDLIFE**

[Order 19-125—Filed June 18, 2019, 11:38 a.m., effective June 18, 2019, 11:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Green (Duwamish) River.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: This rule is needed to close the possibility of fishing activity in waters of the Green (Duwamish) River from the Tacoma Municipal Watershed Boundary Marker (one mile downstream of Tacoma Headworks Dam) to the Friday Creek confluence. Based upon consultation with Tacoma Water, this rule is needed to protect water quality in the associated municipal watershed. The department is in the process of making this rule permanent. Given the immediacy of the public welfare issue, an emergency rule with immediate effect is needed until permanent rules can be developed.

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

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

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

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

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

Date Adopted: June 14, 2019.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-04000R Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective immediately until further notice:

Green (Duwamish) River (King Co.): From the Tacoma Municipal Watershed Boundary Marker (1 mile downstream of Tacoma Headworks Dam) to the Friday Creek confluence: Closed Waters.

**WSR 19-13-094
 EMERGENCY RULES
 DEPARTMENT OF
 FISH AND WILDLIFE**

[Filed June 18, 2019, 4:12 p.m., effective June 20, 2019]

Effective Date of Rule: June 20, 2019.

Purpose: Amends recreational fishing rules for Anderson Lake (Jefferson County).

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: This rule is needed to close fishing activity in waters of Anderson Lake. Toxins produced from blue green algae blooms have risen far above safe levels for recreation. As a result, Washington state parks has closed the lake to all recreational access. Given the extreme danger of being in contact with toxins in the water, the Washington department of fish and wildlife is also closing the lake to fishing until further notice. Given the immediacy of the public welfare issue, an emergency rule is needed, there [is] insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 18, 2019.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000S Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective June 20, 2019 until further notice:

Anderson Lake (Jefferson County): Closed Waters.

WSR 19-13-095
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-132—Filed June 18, 2019, 4:16 p.m., effective June 26, 2019]

Effective Date of Rule: June 26, 2019.

Purpose: Amend recreational shrimping rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000Q; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available in Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7 East, 7 South, 7 West and 12. In addition, harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp consistent with signed management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 18, 2018.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000R Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective June 26, 2019, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open daily to the harvest of all shrimp species until further notice.

(2) Marine Area 7 East: Open June 26 through June 27 to the harvest of all shrimp species. Open June 28 until further notice to the harvest of all species except spot shrimp in waters equal to or less than 200 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is

unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) Marine Area 7 South: Open June 26 through June 27 to the harvest of all shrimp species.

(4) Marine Area 6 (excluding the Discovery Bay Shrimp District) and Marine Area 7 West: Open June 1 until further notice to the harvest of all shrimp species on Thursdays, Fridays, Saturdays, and Sundays only.

(5) Marine Areas 8-1, 8-2, 9, and 11: Open until further notice to the harvest of all species except spot shrimp in waters equal to or less than 150 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(6) Marine Area 13: Open until further notice to the harvest of all species except spot shrimp in waters equal to or less than 250 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 250 feet deep.

REPEALER

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

WAC 220-330-07000Q Shrimp—Areas and seasons. (19-118)