

WSR 19-23-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-281—Filed November 6, 2019, 4:46 p.m., effective November 12, 2019]

Effective Date of Rule: November 12, 2019.

Purpose: Amend Puget Sound commercial gillnet fishery rules.

Citation of Rules Affected by this Order: Repealing WAC 220-354-16000Y, 220-354-16000Z and 220-354-12000S; and amending WAC 220-354-160 and 220-354-120.

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

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

Reasons for this Finding: This emergency rule is needed to close commercial purse seine and gillnet salmon fisheries in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B beginning November 12, 2019. Inseason observations indicate lower than normal hatchery returns to this date. These measures are necessary to ensure that hatchery broodstock and escapement goals are met. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 6, 2019.

Tim Burns
 for Kelly Susewind
 Director

NEW SECTION

WAC 220-354-16000Z Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective November 12 through November 20, 2019:

| Areas | Open Periods | |
|-------------|--------------|----------------------------|
| 12 and 12B: | Closed | 11/12, 11/14, 11/18, 11/20 |

NEW SECTION

WAC 220-354-12000S Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective November 13 through November 21, 2019:

| Areas | Open Periods | |
|-------------|--------------|---------------------|
| 12 and 12B: | Closed | 11/13, 11/19, 11/21 |

REPEALER

The following section of the Washington Administrative Code is repealed effective November 12, 2019:

WAC 220-354-16000Y Puget Sound salmon—Gillnet—Open periods. (19-278)

The following section of the Washington Administrative Code is repealed effective November 21, 2019:

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

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

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

WSR 19-23-015
EMERGENCY RULES
DEPARTMENT OF AGRICULTURE

[Filed November 8, 2019, 8:49 a.m., effective November 8, 2019, 8:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In the interest of protecting domestic rabbits in Washington state from rabbit hemorrhagic disease (RHD), movement restrictions are being placed on rabbits and rabbit products on Whidbey Island.

Citation of Rules Affected by this Order: New WAC 16-51-014, 16-51-015, 16-51-016, 16-51-017, 16-51-018, 16-51-019, and 16-51-020.

Statutory Authority for Adoption: RCW 16.36.040.

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

Reasons for this Finding: In November 2019, the department confirmed positive diagnosis of RHD found in a domestic feral rabbit on Whidbey Island within Washington state. RHD is an extremely infectious and almost universally fatal viral disease that is not endemic to Washington. It is reportable to the OIE (Office International de Epizooties, also known as the World Health Organization for Animal Health) under WAC 16-70-010.

The establishment of RHD in Washington mainlands would be costly to the rabbit industry and consumers. It is of particular concern due to potential partial loss of livelihood

for rabbit breeders, loss of companion animals, loss of animals for 4-H participants and loss of primary protein source for individuals raising rabbits for consumption. The RHD virus is very contagious and easily spread through numerous means including direct contact with infected live or dead rabbits and/or contact with contaminated equipment, tools, hutches, and bedding. The director of agriculture, pursuant to authorities in chapter 16.36 RCW, has determined that the containment of RHD on Whidbey Island is necessary to protect domestic rabbits on the Washington mainland and unaffected islands.

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 7, Amended 0, Repealed 0.

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

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

Date Adopted: November 8, 2019.

Derek I. Sandison
Director

Chapter 16-51 WAC

Quarantine Zones for Rabbit Hemorrhagic Disease

Whidbey Island

NEW SECTION

WAC 16-51-014 Definitions. "Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture.

"Premises" means any property where rabbits are raised, held, or boarded.

"RHD" means Rabbit Hemorrhagic Disease

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

NEW SECTION

WAC 16-51-015 Necessity of establishing a quarantine zone for RHD—Purpose. This chapter is authorized by RCW 16.36.040. In November 2019, the department confirmed positive diagnoses of Rabbit Hemorrhagic Disease (RHD) found in a domestic feral rabbit on Whidbey Island within Washington State. RHD is an extremely infectious and almost universally fatal viral disease that is not endemic to Washington. It is reportable to the OIE (Office International de Epizooties, also known as the World Health Organization for Animal Health) under WAC 16-70-010.

The establishment of RHD in Washington mainlands would be costly to the rabbit industry and consumers. It is of particular concern due to potential partial loss of livelihood for rabbit breeders, loss of companion animals, loss of animals for 4-H participants and loss of primary protein source for individuals raising rabbits for consumption. The RHD virus is very contagious and easily spread through numerous means including direct contact with infected live or dead rabbits and/or contact with contaminated equipment, tools, hutches, and bedding. The director of agriculture, pursuant to authorities in chapter 16.36 RCW, has determined that the containment of RHD on Whidbey Island is necessary to protect domestic rabbits on the Washington mainland and unaffected islands.

NEW SECTION

WAC 16-51-016 Whidbey Island under quarantine for RHD. A quarantine zone is created within Whidbey Island. All premises lying within the boundaries of Whidbey Island fall under movement restrictions per WAC 16-51-017 and WAC 16-51-018.

NEW SECTION

WAC 16-51-017 Prohibition on moving rabbits from the quarantine zone established for RHD. Movement of living or dead rabbits out of the quarantine zone listed in section 16-51-016 is prohibited.

NEW SECTION

WAC 16-51-018 Prohibition on moving rabbit products, crates, and rabbit equipment from the quarantine zone established for RHD. Movement of rabbit products, crates, and rabbit equipment out of the quarantine zone listed in section 16-51-016 is prohibited.

NEW SECTION

WAC 16-51-019 Disposal of dead rabbits originating within the quarantine zone. Dead rabbits may only be disposed of by burial or landfill in accordance with WAC 16-25-025(1) and WAC 16-25-025(5).

(1) Burial.

(a) A carcass may be disposed of by burial on the property where the livestock animal died if done with the approval of the property owner.

(b) A carcass must be buried to a depth so that no part of the carcass is nearer than three feet to the natural surface of the ground. Every part of the carcass must be covered with at least three feet of soil within twenty-four hours of placement in the ground.

(c) Carcass burial must be:

(i) At least three hundred feet from any well, spring, or body of surface water, such as a river, stream, lake, pond, or intermittent stream;

(ii) At least three hundred feet from any residence not owned by the owner of the livestock animal;

(iii) At least fifty feet from any property line between parcels under different ownership; and

(iv) Not in a low-lying area subject to seasonal flooding or within a hundred-year flood plain or in a manner that will impact groundwater.

(d) Each burial site is limited to one thousand pounds of carcasses or one livestock animal weighing more than one thousand pounds.

(e) Carcass burial is not allowed on a property of less than five acres, except for the burial of a single carcass weighing less than two hundred pounds. The maximum amount of land used for burial during any year is limited to ten percent of the property or one acre, whichever is greater.

(2) Landfill. Carcasses may be disposed of at a privately or publicly owned landfill with prior approval of the local health officer and the landfill operator, and permitted in accordance with chapter 70.95 RCW and chapters 173-350 and 173-351 WAC.

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

NEW SECTION

WAC 16-51-020 Special permits—Quarantine zone.

The department may issue special permits for actions otherwise forbidden under provisions of this chapter. These special permits shall be conditioned to minimize the risk of spreading RHD.

WSR 19-23-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-285—Filed November 8, 2019, 5:08 p.m., effective November 12, 2019]

Effective Date of Rule: November 12, 2019.

Purpose: Amend recreational salmon fishing rules for Marine Areas 10 and 13, Green (Duwamish) River, Kennedy Creek, and Minter Creek.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000M; and amending WAC 220-312-040 and 220-313-060.

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

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

Reasons for this Finding: This emergency rule closes all recreational salmon angling in the areas specified. Inseason indicators show extremely low chum returns to this point in the season. This conservation measure is necessary to ensure that hatchery broodstock and escapement goals are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: November 8, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000N Puget Sound salmon—Salt-water seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060:

1. Catch Record Card Area 10: Effective November 12 through November 15, 2019: Closed.

2. Catch Record Card Area 13, waters EAST of a line from the southernmost point of Devil's Head (at the southern end of Key Peninsula) to the eastern boundary of Tolmie State Park: release all chum.

3. Marine Area 13 (South Puget Sound) waters WEST of a line from the southernmost point of Devil's Head (at the southern end of Key Peninsula) to the eastern boundary of Tolmie State Park: Effective November 12, 2019 until further notice: Closed.

NEW SECTION

WAC 220-3112-04000D Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective November 12, 2019 until further notice, the following areas are closed to salmon angling:

1. Green (Duwamish) River (King Co.): from an east-west line extending through the southernmost tip of Harbor Island to Tukwila International Blvd./Old Hwy. 99 to the Tacoma Municipal Watershed Boundary Marker (1 mile downstream of Tacoma Headworks Dam)

2. Kennedy Creek (Thurston Co.): from the mouth (500 yards east of the northbound Hwy. 101 Bridge) to the northbound Hwy. 101 Bridge

3. Minter Creek (Pierce Co.): from the mouth to boundary markers (approx. 50' downstream of the hatchery rack)

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-3112-04000D is probably intended to be WAC 220-312-04000D.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 12, 2019:

WAC 220-313-06000M Puget Sound salmon—Saltwater seasons and daily limits. (19-251)

WSR 19-23-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-283—Filed November 8, 2019, 5:18 p.m., effective November 11, 2019]

Effective Date of Rule: November 11, 2019.

Purpose: Amend commercial salmon fishing rules for Willapa Bay.

Citation of Rules Affected by this Order: Amending WAC 220-354-250.

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2N, 2M, 2T, 2U and 2R. Natural coho salmon returning to tributaries of Willapa Bay have been significantly lower than preseason predictions. Managers will continue to assess coho returns and reopen if warranted. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 8, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000D Willapa Bay salmon fall fishery—Notwithstanding the provisions of WAC 220-354-250, effective November 11, 2019 until further notice, it is unlawful to fish for salmon in Willapa Bay Salmon Management and Catch Reporting Areas 2N, 2M, 2T, 2U, and 2R for commercial purposes or to possess salmon taken from those waters for commercial purposes.

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

WSR 19-23-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-286—Filed November 8, 2019, 5:23 p.m., effective November 11, 2019]

Effective Date of Rule: November 11, 2019.

Purpose: Amend Puget Sound commercial gillnet fishery rules.

Citation of Rules Affected by this Order: Repealing WAC 220-354-16000A and 220-354-12000T; and amending WAC 220-354-160 and 220-354-120.

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

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

Reasons for this Finding: This emergency rule is needed to close commercial purse seine and gillnet salmon fisheries in Puget Sound Salmon Management and Catch Reporting Area 8D beginning November 11, 2019. Inseason observations indicate lower than normal chum returns to this date. These measures are necessary to ensure that hatchery broodstock and escapement goals are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 8, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000A Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective November 13 through November 20, 2019:

| Areas | Open Periods | |
|-------|--------------|---|
| 8D: | Closed | 11/13, 11/14, 11/15, 11/20, 11/21, 11/22, 11/27, 11/28, 11/29 |

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 220-354-12000T Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective November 11 through November 27, 2019:

| Areas | Open Periods | |
|-------|--------------|---------------------|
| 8D: | Closed | 11/11, 11/19, 11/27 |

REPEALER

The following section of the Washington Administrative Code is repealed effective November 30, 2019:

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

The following section of the Washington Administrative Code is repealed effective November 28, 2019:

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

**WSR 19-23-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-284—Filed November 8, 2019, 5:33 p.m., effective November 11, 2019]

Effective Date of Rule: November 11, 2019.

Purpose: Amend commercial sea urchin rules in Puget Sound.

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

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule closes harvest of red sea urchins in all districts to reduce the risk of wasting harvested urchins that cannot be sold. Harvestable surpluses of green sea urchin[s] exist in the districts specified and there is less risk of wastage of green urchins. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 8, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000R Commercial sea urchin fishery. Notwithstanding the provisions of WAC 220-340-750, effective November 11, 2019 until further notice:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1; Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A in District 2; District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude; District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude; District 6; and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(3) The maximum cumulative landings for green sea urchins for each weekly fishery opening period is 1,000 pounds per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 11, 2019:

WAC 220-340-75000Q Commercial sea urchin fisheries.
(19-270)

WSR 19-23-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-282—Filed November 12, 2019, 4:54 p.m., effective November 13, 2019]

Effective Date of Rule: November 13, 2019.

Purpose: Amend recreational salmon fishing rules for Willapa Bay and its tributaries.

Citation of Rules Affected by this Order: Amending WAC 220-312-020 and 220-313-070.

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: These measures are necessary to close recreational salmon fishing in Willapa Bay and its tributaries. Coho salmon returns to tributaries in the Willapa Bay watershed have been significantly lower than preseason predictions. Retention of all salmon is prohibited in all fisheries prosecuted in the Willapa Bay watershed as a conservation measure. Managers will continue to assess coho returns and reopen if warranted. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 12, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000W Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective November 13, 2019 until further notice, Salmon angling is closed in the following waters:

1) Bear River - (Pacific Co) from mouth (Hwy 101 Bridge) to Lime Quarry Rd (approx. 2 river miles)

2) Forks Creek - from Forks Creek Hatchery rack upstream 500' at fishing boundary sign

3) Naselle River - from the Hwy 101 Bridge to the Crown Mainline (Salme) Bridge

4) Nemah River, Middle - from mouth upstream to the Dept. of Natural Resources decommissioned bridge on Middle Nemah A-line Rd

5) Nemah River, North - from Hwy 101 Bridge upstream to N700 Rd (46° 28.58N, 123° 48.54W)

6) Nemah River, South - from mouth (Lynn Point 117 true to opposite shore) upstream

7) North River - from Hwy 105 Bridge to Fall River

8) Smith Creek (Pacific Co. near North River) - from mouth to Hwy 101 Bridge

9) Willapa River - from mouth (City of South Bend boat launch) to Hwy 6 Bridge (near the town of Lebam)

10) Willapa River, South Fork - from mouth to Pehl Rd Bridge

NEW SECTION

WAC 220-313-07000T Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-070, effective November 13, 2019 until further notice, Salmon angling is closed in Catch Record Card Area 2-1.

WSR 19-23-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-287—Filed November 13, 2019, 5:24 p.m., effective November 16, 2019]

Effective Date of Rule: November 16, 2019.

Purpose: Amend recreational salmon fishing rules for Grays Harbor, its tributaries and coastal tributaries from the Hoh River south to Grays Harbor.

Citation of Rules Affected by this Order: Repealing WAC 220-317-07000S; and amending WAC 220-312-030 [220-312-020] and 220-313-070.

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 emergency rule is needed to reduce the adult portion of the salmon daily limit for coastal tributaries from the Hoh River south to Grays Harbor and its tributaries. According to inseason indicators, coho returns to tributaries along the coast from Hoh River south to Grays Harbor appear to be significantly lower than preseason predictions. These conservation measures are being taken to ensure escapement goals are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 13, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000X Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective November 16, 2019 until further notice, no more than 1 adult salmon may be retained as part of the salmon daily limit in the following waters:

- 1) **Black River (Grays Harbor/Thurston Co.)**, from mouth to bridge on 128th Ave. SW.
- 2) **Chehalis River (Chehalis Co.)**, from mouth (Hwy. 101 Bridge in Aberdeen) to the high bridge on Weyerhaeuser 1000 line.
- 3) **Copalis River (Grays Harbor Co.)**, from mouth to Carlisle Bridge.
- 4) **Elk River (Grays Harbor Co.)**, from mouth (Hwy. 105 Bridge) to the confluence of Middle Branch.
- 5) **Hoh River (Jefferson Co.)**, from Olympic National Park boundary upstream to Morgans Crossing boat launch.
- 6) **Hoquiam River, including West Fork (Grays Harbor Co.)**, from mouth (Hwy. 101 Bridge on Simpson Ave) to Dekay Rd. Bridge (West Fork).
- 7) **Hoquiam River, East Fork (Grays Harbor Co.)**, from mouth to confluence of Berryman Creek.
- 8) **Johns River (Grays Harbor Co.)**, from mouth (Hwy. 105 Bridge) to Ballon Creek.

9) **Moclips River (Grays Harbor Co.)**, from mouth to Quinault Indian Reservation boundary.

10) **Newaukum River, including South Fork (Lewis Co.)**, from mouth to Leonard Rd. near Onalaska.

11) **Quinault River, Upper (Clallam Co.)**, from mouth at upper end of Quinault Lake upstream to Olympic National Park boundary.

12) **Salmon River (Jefferson Co.)**, outside Quinault Indian reservation and Olympic National Park)

13) **Satsop River and East Fork (Grays Harbor Co.)**, from mouth to bridge at Schafer State Park; and from 400' below Bingham Creek Hatchery to the dam.

14) **Skookumchuck River (Lewis/Thurston Co.)**, from mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam.

15) **Wishkah River (Grays Harbor Co.)**, from mouth to 200' below the weir at the Wishkah Rearing Ponds; and from 150' upstream to 150' downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary).

16) **Wynoochee River (Grays Harbor Co.)**, from mouth to WDFW White Bridge access site.

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 220-313-07000U Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-070, effective November 16, 2019 until further notice, no more than 1 adult salmon may be retained as part of the salmon daily limit in Catch Record Card Area 2-2.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-313-07000S Coastal salmon—Saltwater seasons and daily limits. (19-185)

**WSR 19-23-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-288—Filed November 14, 2019, 4:43 p.m., effective November 16, 2019]

Effective Date of Rule: November 16, 2019.

Purpose: Amend Puget Sound commercial gillnet fishery rules.

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

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

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

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close the commercial gillnet salmon fishery in the Whatcom Creek Hatchery zone area of Puget Sound Salmon Management and Catch Reporting Area 7B beginning November 16, 2019. Inseason observations indicate lower than expected chum returns to this date for the Whatcom Creek Hatchery. These measures are necessary to ensure that hatchery egg take and escapement goals are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 14, 2019.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000B Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective November 16 through December 7, 2019:

That portion of Puget Sound Management and Catch Reporting Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor, (the Whatcom Creek Hatchery Zone), is closed to gillnets.

REPEALER

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

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

WSR 19-23-065 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-291—Filed November 15, 2019, 2:53 p.m., effective November 15, 2019, 2:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational fishing rules for Drano Lake.

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

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

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

Reasons for this Finding: This emergency rule is needed to return Drano Lake to permanent rule. Drano Lake was closed to angling in late September to increase the number [of] fall Chinook available for broodstock at Little White Salmon National Fish Hatchery. Hatchery managers have recently indicated that broodstock collection is on track to meet program goals and the fishery closure is no longer 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 2.

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

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

Date Adopted: November 15, 2019.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

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

(1) Toutle River (Cowlitz Co.), from the mouth to the forks; salmon, effective immediately through November 30, 2019:

(a) Daily limit 6; up to 4 adults may be retained, of which up to 1 may be a Chinook.

(b) Release all salmon other than hatchery Chinook and hatchery coho.

(2) Toutle River, North Fork (Cowlitz Co.), from the mouth (confluence with South Fork) to posted markers downstream of the fish collection facility; salmon, effective immediately through November 30, 2019:

(a) Daily limit 6; up to 4 adults may be retained, of which only 1 may be a Chinook.

(b) Release all salmon other than hatchery Chinook and hatchery coho.

(3) Green River (Cowlitz Co.), from the mouth to Miners creek; effective immediately through November 30, 2019:

(a) Closed waters: From 400 feet below to 400 feet above the water intake at the upper end of the hatchery.

(b) Salmon: Daily limit 6; up to 4 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(4) Washougal River (Clark/Skamania Co.), from the mouth to the bridge at Salmon Falls; effective immediately through December 31, 2019:

(a) Salmon: Daily limit 6. Up to 3 adult salmon may be retained, of which up to 1 may be a Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(b) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(5) Wind River (Skamania Co.):

(a) From 100 feet above Shipherd Falls to Moore Bridge: Effective immediately through November 30, 2019: Closed waters.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-312-03000E Freshwater exceptions to statewide rules—Southwest. (19-233)

The following section of the Washington Administrative Code is repealed effective January 1, 2020:

WAC 220-312-03000F Freshwater exceptions to statewide rules—Southwest. (19-291)

**WSR 19-23-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-290—Filed November 15, 2019, 2:58 p.m., effective November 18, 2019]

Effective Date of Rule: November 18, 2019.

Purpose: Amend recreational salmon fishing rules for Marine Area 12.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule closes all recreational salmon angling in the Hoodport Hatchery Zone and require[s] release of chum in the rest of Marine Area 12. Hatchery returns are below projections. This conservation measure is necessary to ensure that hatchery broodstock goals are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 15, 2019.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000P Puget Sound salmon—Salt-water seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, effective November 18 until further notice:

Catch Record Card Area 12:

a) **Entire area except the Hoodport Hatchery Zone:** Release chum.

b) **Hoodport Hatchery Zone** (waters within a 2,000 foot arc seaward of the yellow marker buoys at the mouth of Finch Creek): Closed.

**WSR 19-23-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-292—Filed November 15, 2019, 3:10 p.m., effective November 16, 2019]

Effective Date of Rule: November 16, 2019.

Purpose: Amend recreational salmon fishing rules for Minter Creek.

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

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

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

Reasons for this Finding: This emergency rule returns Minter Creek to permanent rule, thus reopening salmon angling. Minter Creek Hatchery is now expected to meet hatchery egg take goals so the salmon closure is no longer 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 1.

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

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

Date Adopted: November 15, 2019.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000F Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective November 16, 2019 until further notice, the following areas are closed to salmon angling:

(1) **Green (Duwamish) River (King Co.):** from an east-west line extending through the southernmost tip of Harbor Island to Tukwila International Blvd./Old Hwy. 99 to the Tacoma Municipal Watershed Boundary Marker (1 mile downstream of Tacoma Headworks Dam)

(2) **Kennedy Creek (Thurston Co.):** from the mouth (500 yards east of the northbound Hwy. 101 Bridge) to the northbound Hwy. 101 Bridge

REPEALER

The following section of the Washington Administrative Code is repealed effective November 16, 2019:

WAC 220-312-04000D Freshwater exceptions to statewide rules—Puget Sound. (19-285)

WSR 19-23-079

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed November 19, 2019, 9:23 a.m., effective November 21, 2019]

Effective Date of Rule: November 21, 2019.

Purpose: Chapter 246-873A WAC, Hospital pharmacy associated clinics, the pharmacy quality assurance commission (commission) is establishing standards supporting the regulation, inspection, and investigation of pharmacy services provided in individual practitioner offices and multi-practitioner clinics owned and operated by a hospital based on a level of risk and the type of pharmacy services provided at a particular location. This filing supersedes and replaces emergency rules filed as WSR 19-15-098 on July 22, 2019.

Citation of Rules Affected by this Order: New WAC 246-873A-010, 246-873A-020, 246-873A-030, 246-873A-040, 246-873A-050, 246-873A-060, 246-873A-070, 246-873A-080, 246-873A-090, and 246-873A-095.

Statutory Authority for Adoption: RCW 18.64.043(6).

Other Authority: RCW 18.64.043, 18.64.005.

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

Reasons for this Finding: SSB 6558 (chapter 118, Laws of 2016) amended RCW 18.64.043 directing the commission to adopt emergency rules to implement the bill and to keep the emergency rules in effect until permanent rules are adopted. The standards in this emergency rule have not changed from the previous emergency rule. The commission has filed a preproposal statement of inquiry, WSR 16-16-025, and has initiated stakeholder work on developing proposed rules.

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

Number of Sections Adopted at 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 10, Amended 0, Repealed 0.

Date Adopted: November 14, 2019.

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

Chapter 246-873A WAC

HOSPITAL PHARMACY ASSOCIATED CLINICS

NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

(a) Adding HPACs. A parent hospital pharmacy may add HPACs on a hospital pharmacy license at any time and must file a hospital pharmacy license addendum with the commission along with applicable fees set forth in WAC 246-907-0302. Added HPACs are subject to inspection in accordance with this chapter.

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

(3) HPAC locations are identified as follows:

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

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

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

NEW SECTION

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

NEW SECTION

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

NEW SECTION

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

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

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

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

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

(5) Controlled substance accountability. The responsible manager of the parent hospital pharmacy must include accountability standards of controlled substances consistent with WAC 246-873-080(7) in the HPAC policies and procedures.

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

NEW SECTION

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

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

- (a) The name of the patient;
- (b) Name and amount of drug(s) added;
- (c) Beyond use date; and
- (d) Initials of the personnel who prepared and checked the solution.

NEW SECTION

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

NEW SECTION

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

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

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

NEW SECTION

WAC 246-873A-090 Inspections of HPAC. The commission shall conduct inspections of HPACs in conjunction with associated hospital pharmacy inspections under WAC 246-869-190 and consistent with WAC 246-869-110. All

deficiencies shall be noted on the hospital pharmacy inspection form.

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

WSR 19-23-087**EMERGENCY RULES****DEPARTMENT OF****CHILDREN, YOUTH, AND FAMILIES**

[Filed November 19, 2019, 2:06 p.m., effective November 19, 2019, 2:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 110-03 WAC creates rules for informal dispute resolution between the department of children, youth, and families (DCYF) and person[s] 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: November 19, 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 19-23-088

EMERGENCY RULES DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed November 19, 2019, 3:07 p.m., effective November 19, 2019, 3:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend WAC 110-15-0280 to align with the department of children, youth, and families' (DCYF) emergency administrative hearing rules, chapter 110-03 WAC.

Citation of Rules Affected by this Order: Amending WAC 110-15-0280.

Statutory Authority for Adoption: RCW 43.216.905, 43.216.906.

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: DCYF has conflicting WAC regarding an administrative appeal process that impacts the general welfare. Observing the time requirements for notice and comment would be contrary to the public interest.

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

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

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

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

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

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

Date Adopted: November 18, 2019.

Brenda Villarreal
Rules Coordinator

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

WAC 110-15-0280 Right to request an administrative hearing. (1) WCCC consumers have a right to request ~~((a hearing under chapter 388-02 WAC))~~ administrative hearings on any action affecting WCCC benefits.

(2) Child care providers may request administrative hearings ~~((under chapter 388-02 WAC))~~ only for WCCC overpayments. A provider's burden of proof is a preponderance of the evidence.

(3) To request a hearing, a consumer or provider:

(a) Contacts the ~~((DSHS))~~ DCYF office which sent them the notice; or

(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in ~~((WAC 388-02-0217))~~ chapter 110-03 WAC. Initial orders may be appealed to a ~~((DSHS))~~ DCYF review judge under chapter ~~((388-02))~~ 110-03 WAC.

(5) To request a hearing under the seasonal child care program, see WAC ~~((170-290-3860 and 170-290-3865))~~ 110-15-3860 and 110-15-3865.

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