

WSR 20-02-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-310—Filed December 18, 2019, 2:40 p.m., effective December 19, 2019]

Effective Date of Rule: December 19, 2019.

Purpose: Amends recreational fishing rules for southwest rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000H.

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

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

Reasons for this Finding: The Washington department of fish and wildlife modified coho salmon rules in several southwest Washington tributaries in late November due to limited returns to hatchery facilities and projected broodstock collection shortfalls. Recent rainfall events increased river flows, resulting in additional fish entering tributary hatcheries. Broodstock collection goals are expected to be met, therefore continued modification of these fisheries 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 18, 2019.

Kelly Susewind
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective December 19, 2019:

WAC 220-312-03000H Freshwater exceptions to statewide rules—Southwest. (19-295)

WSR 20-02-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-315—Filed December 18, 2019, 3:06 p.m., effective December 20, 2019]

Effective Date of Rule: December 20, 2019.

Purpose: Amends recreational crab rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000J, 220-330-04000K, 220-310-02000A and 220-310-02000B; and amending WAC 220-330-040 and 220-310-020.

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational crab harvest in the majority of the Hood Canal Crab Management Region. The area being opened includes Marine Area 12 north of Ayock Point and Marine Area 9 between the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point. Earlier this winter comanagers agreed to increase the state and tribal harvest shares in Marine Areas 8-1 and 8-2. Comanagers have now agreed to increase the state and tribal harvest shares in Marine Area 9 between the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point and Marine Area 12, allowing the winter recreational fishery to be extended through January 31, 2020. Comanagers have agreed to continue the closure of Marine Area 12 south of Ayock Point which has been in effect since summer 2019.

Comanagers have also agreed to waive the requirement to record retained Dungeness crab on a valid catch record card in Marine Areas 8-1, 8-2, 9 between the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point, and 12 north of Ayock Point during January 2020. Instead, the average monthly recreational harvest for winter during the last three seasons will be used as the January recreational harvest estimate. 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 4.

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: December 18, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000K Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective December 20, 2019 until further notice, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

1) Marine Area 4 east of the Bonilla-Tatoosh line, Marine Area 5, Marine Area 6, Marine Area 7, and Marine Area 9 except those waters between the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point are open to fish for crab for personal use through December 31, 2019.

2) Marine Area 8-1, Marine Area 8-2, that portion of Marine Area 9 between the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point, and that portion of Marine Area 12 north of a line projected due east from Ayock Point are open to fish for crab for personal use through January 31, 2020.

[NEW SECTION]

WAC 220-310-02000B Catch record cards. Notwithstanding the provisions of WAC 220-310-020, effective January 1, 2020 through January 31, 2020 anglers will not be required to have a valid and appropriate Puget Sound Dungeness crab catch record card as described in WAC 220-310-010 to fish for or possess for personal use, Dungeness crab in Marine Areas 8-1, 8-2, 9 between the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point, and 12 north of a line projected due east from Ayock Point. Accordingly, anglers will also not be required to record any retained Dungeness crab on a Catch Record Card from these areas from January 1 through January 31, 2020.

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

REPEALER

The following sections of the Washington Administrative Code are repealed effective December 20, 2019:

WAC 220-330-04000J Crab—Areas and seasons—Personal use. (19-306)

WAC 220-310-02000A Catch record cards (19-306)

The following sections of the Washington Administrative Code are repealed effective February 1, 2020:

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

WAC 220-310-02000B Catch record cards

WSR 20-02-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-316—Filed December 18, 2019, 3:21 p.m., effective December 18, 2019, 3:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial squid rules.

Citation of Rules Affected by this Order: Amending WAC 220-340-770 and 220-340-030.

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 align the commercial squid regulation with provisions of the 2017-2022 Puget Sound Squid Management Plan. 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: December 18, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-77000B Commercial squid fishery Notwithstanding the provisions of WAC 220-340-770, effective immediately, until further notice, the following applies to Puget Sound as defined in WAC 220-340-010 only:

It is unlawful fish for squid for commercial purposes with drag seine gear.

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 220-340-03000E Shellfish harvest logs Notwithstanding the provisions of WAC 220-340-030, effective

immediately, until further notice, the following applies to Puget Sound as defined in WAC 220-340-010 only:

It is unlawful for vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, to fail to permanently and legibly record in ink the following information before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken:

The vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, location (nearest landmark, bay, or GPS coordinates), starting and ending time of fishing, total vessel wattage of attracting lights, average depth of harvest, and numbers of other species caught and returned.

WSR 20-02-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-317—Filed December 18, 2019, 3:32 p.m., effective December 18, 2019, 3:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500Z; and amending WAC 220-340-455.

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 will close Region 3-2 on December 22 at 6:00 pm because the Region 3-2 State quota will have been reached. With this rule, Regions 1 and 2E will remain closed. It will continue the Puget Sound commercial crab harvest in Regions 2-West, 3-1, and 3-3. Pot limits in Regions 2-West, 3-1, and 3-3 will remain at fifty pots per license. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 18, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500A Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455:

(1) Effective immediately until further notice, all of Crab Management Region 1 is closed. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B.

(2) Effective immediately until further notice, Crab Management Region 2E is closed. Region 2E includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(3) Effective immediately, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-2. Effective 6:00 p.m. on December 22, 2019 until further notice, Crab Management Region 3-2 will be closed. Region 3-2 includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

(4) Effective immediately until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 2 West, 3-1, and 3-3. These regions include Marine Fish-Shellfish Catch Reporting Areas 23A, 23B, 25B, 25D, 26A West, 23C and 29.

(5) All remaining buoy tags per license must be onboard the designated vessel and available for immediate inspection.

(6) Effective immediately until further notice, the following areas are closed to commercial crab fishing.

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-340-45500Z Commercial crab fishery—Seasons and areas—Puget Sound. (19-303)

WSR 20-02-017
EMERGENCY RULES
DEPARTMENT OF AGRICULTURE

[Filed December 19, 2019, 9:20 a.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: The purpose of this order is to adopt rules for a hemp production program in the interim period between January 1 and February 22, 2020, when there will not be a hemp licensing and regulatory program in effect. The industrial hemp research pilot is repealed under section 15 of E2SSB 5276 effective January 1, 2020, and rule making is underway to adopt new rules under chapter 16-306 WAC for the hemp program which is intended to replace the industrial hemp research pilot currently adopted under chapter 16-305 WAC. However, chapter 16-306 WAC will not be in effect until February 22, 2020.

Citation of Rules Affected by this Order: New chapter 16-306 WAC, Hemp program; and repealing chapter 16-305 WAC, Industrial hemp research program.

Statutory Authority for Adoption: RCW 15.140.030.

Other Authority: Chapter 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: If the department does not adopt the new hemp program rules on January 1, 2020, there will be fifty-three days without regulations for hemp producers. The immediate adoption of this rule is necessary in order to continue to allow for lawful hemp production to occur during the gap between when the pilot program is repealed and when chapter 16-306 WAC takes effect. Without this, the department would not have the ability to regulate licensees, process license applications or conduct hemp inspections. The legislature, in E2SSB 5276, found that immediate enactment of this program is necessary for the preservation of the public health safety, or general welfare.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 22, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 22, Amended 0, Repealed 36.

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 22, Amended 0, Repealed 36.

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: December 18, 2019.

Derek I. Sandison
Director

Chapter 16-306 WAC
HEMP PROGRAM

NEW SECTION

WAC 16-306-010 Purpose of chapter. Under the authority of chapter 15.140 RCW, the department adopts rules to establish a hemp program in accordance with the Agricultural Improvement Act of 2018. These rules include licensing requirements. Licensing is required for persons to produce hemp as provided under this chapter and chapter 15.140 RCW.

NEW SECTION

WAC 16-306-020 Activities outside the scope of the hemp program. The following activities are not subject to regulatory sanctions or penalties under this chapter, except for the limitation of THC content under chapter 15.140 RCW:

- (1) Possessing, transporting, marketing or exchanging legally obtained hemp and hemp products;
- (2) Growing, producing, possessing, processing, marketing or exchanging marijuana as defined in RCW 69.50.101.

NEW SECTION

WAC 16-306-030 Definitions. "Acceptable hemp THC level" means the application of the measurement of uncertainty to the reported THC concentration level on a dry weight basis producing a distribution or range that includes 0.3 percent or less.

"Agricultural Improvement Act of 2018" means sections 7605, 10113, 10114, and 12619 of the Agricultural Improvement Act of 2018, P.L. 115-334.

"Applicant" means a person who submits an application for a license to participate in the hemp program as required under this chapter.

"Contiguous land area" means a specific field with designated boundaries that is planted with hemp. Separate parcels connected only by thin or narrow plantings of hemp or separated by physical barriers such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means the licensee renews their license annually prior to expiration, such that the licensee is continuously operating under a valid license.

"Corrective action plan" means a plan by the department for a licensed hemp producer to correct a negligent violation of, or noncompliance with, a hemp production plan, its terms, or any other regulation set forth under this chapter.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or rendered nonretrievable in another manner approved by the department.

"Disposal" means the material is collected for destruction by a person authorized to handle marijuana such as a DEA-registered reverse distributor, or in another manner approved by the department.

"Hemp" means the plant *Cannabis sativa* L. and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

"Key participant" means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include such management as farm, field, or shift managers.

"Legal description" means a method of locating or describing land in relation to the public land survey system such as section, township, and range.

"Licensee" means any person who holds a license from the department to grow or produce hemp in Washington state.

"Lot" refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, "lot" is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this chapter, "lot" is to be defined by the producer in terms of farm location, field acreage, and variety.

"Measurement of uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement. The measurement of uncertainty is similar to a margin of error. When the measurement of uncertainty, normally expressed as a +/- with a number, (e.g., +/- 0.05) is combined with the reported measurement, it produces a range and the actual measurement has a known probability of falling within that range.

"Process" means the processing, compounding, or conversion of hemp into hemp commodities or products.

"Produce" or "production" means the planting, cultivation, growing, or harvesting of hemp, including hemp seed.

"Registered land area" means a contiguous land area, including greenhouses and storage areas registered with the department as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, or storage area so long as those fields, greenhouses, or storage areas are at the same physical address.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store hemp.

"THC concentration" means the percent of total delta-9 tetrahydrocannabinol, which is the conversion of delta-9 tetrahydrocannabinolic acid into THC.

NEW SECTION

WAC 16-306-040 Hemp producer license application. (1) An applicant for a hemp producer license must:

(a) Provide the information required for a hemp producer license on a form provided by the department that at a minimum includes the following:

(i) The name and business address of the applicant;

(ii) For corporate applicants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;

(iii) The legal description (section, township, and range) in which any proposed registered land area is located; and

(iv) Geospatial location coordinates of any proposed field, greenhouse, or other site where hemp is produced.

(b) Apply to the department for participation in the program between January 1st and March 31st. Applications may be received after March 31st but are subject to a late license fee;

(c) Pay fees as required under this chapter;

(d) Consent to entrance of their property by the department to inspect their registered land area with or without prior notice; and

(e) Report hemp crop acreage to USDA Farm Service Agency (FSA). A link to FSA information on how to report hemp crop acreage to FSA is available on the USDA hemp production program website.

(2) Licenses will expire on the last day of April following the year the license is issued.

(3) All applications must be accompanied by a criminal history report completed within sixty days of the application date. If the application is for a business entity, a completed criminal history report must be provided for each key participant.

(a) The criminal history report must indicate the applicant has not been convicted of a state or federal felony related to a controlled substance for the ten years prior to the date of when the report was completed. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

(b) A person with a prior felony related to controlled substances within ten years of applying for a producer license is not eligible for the license. Key participants of associations, corporations, and other business entities with a prior felony related to a controlled substance within ten years of applying for a producer license are not eligible for the license under this felony drug conviction limitation. Business entities may still be eligible if the key participant with a prior felony is discharged.

(4) Any person who materially falsifies information in the application shall be ineligible to participate in the program.

NEW SECTION

WAC 16-306-050 Hemp producer license. (1) A person must obtain a hemp producer license prior to planting or growing hemp in this state, including growing hemp seed crop.

(2) A licensed producer may sell or exchange hemp produced under the license once the department has issued doc-

umentation declaring the hemp to meet the THC concentration requirements.

(3) The department may inspect and sample a producer's licensed operations. The producer must permit unrestricted access to all hemp plants, plant parts, grain and seeds within a registered land area whether growing or not, and all land and facilities used by the producer for the growing and storage of hemp, pesticide storage or housing, and all documents and records pertaining to the licensee's hemp business operations during business hours.

(4) The licensee must pay all applicable fees adopted under this chapter for any required inspections and testing. Samples may be taken at the department's discretion for testing.

(5) No registered land area may contain cannabis plants or parts thereof that the licensee knows or has reason to know are of a variety that will produce a plant that when tested will produce more than 0.3 percent THC concentration on a dry weight basis. No licensee shall use any such variety for any purpose associated with the growing of hemp.

(6) Licenses will expire on the last day of April following the year the license is issued. This date is not tied to the harvest and planting season. Rather it is tied to the window for applications (January 1st - March 31st) and the thirty days for the department to make a decision. For example, if a producer applies for a license February 1, 2020, and is granted a license on March 1, 2020, the license would expire April 30, 2021.

(7) Unless the license is renewed, any plant material that is not harvested prior to expiration of the license must be destroyed.

(8) Upon any change to the registered land area(s) after issuance of the license, the licensee must submit to the department for approval an updated legal description, geospatial location, and a description of the changes to the registered land area(s) and required fees.

(9) At a minimum, licensees are required to post a sign on each side of every registered land area listed on the application including the following information:

- (a) The department-issued license number;
- (b) Crop type; and
- (c) The department contact phone number.

(10) Licensees growing hemp for seed certification must also follow the requirements in chapter 16-302 WAC.

NEW SECTION

WAC 16-306-060 Records retention. Licensed producers are required to maintain copies of all records and reports necessary to demonstrate compliance with the program. These records include those that support, document, or verify the information in the forms the licensee submitted to the department. Licensees must keep records and reports for a minimum of three years from the expiration date of the license that was in effect at the time the records were generated.

NEW SECTION

WAC 16-306-070 Hemp seed and propagules. (1) A licensee must notify the department of the source of the hemp

seed or clones solely for the purpose of maintaining a record of the sources of seeds and clones being used or having been used for hemp production in this state.

(2) The department is not responsible for obtaining seeds on behalf of the licensee.

(3) The department is not liable for and does not warrant that the seed is fit for any purpose.

NEW SECTION

WAC 16-306-080 Hemp inspection and sampling criteria. (1) All licensees are subject to inspection by the department. The department shall inspect registered land areas under a producer license at least once during each license period. The department's inspections of the registered land area may include the following:

- (a) Inspections for unauthorized plant growth;
- (b) Inspections for hemp in any form on the registered land area;
- (c) Inspections for rogue, volunteer, or off-type hemp plants;
- (d) Audits of existing business data and reports related to hemp;
- (e) Identifying compliance with required signage as specified in WAC 16-306-050; and
- (f) Assessing compliance with other applicable licensing terms and conditions.

(2) The department shall take hemp samples from registered land areas licensed under a producer license within fifteen days prior to the anticipated harvest of cannabis plants to test for THC concentration.

(3) The licensee or designated employee shall accompany the sampling agent throughout the sampling process.

(4) Registered land areas may be inspected by the department for a period of three hundred sixty-five days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants.

NEW SECTION

WAC 16-306-090 Hemp THC testing criteria. (1) Hemp will be tested for THC concentration in a department-run or approved laboratory as determined by the department using post-decarboxylation or other testing methods approved by the department.

(2) Hemp testing will take place at times and on dates determined by the department.

(3) The department will apply the measurement of uncertainty to the reported THC concentration to determine if hemp material is in compliance under this chapter.

NEW SECTION

WAC 16-306-100 Voluntary certification for hemp intended for human consumption. (1) In addition to testing required under WAC 16-306-090, producers may obtain certification that hemp meets the department's standards for human consumption if tested for the following:

- (a) Nonapproved pesticide or herbicide use. The list of approved pesticides and herbicides is available on the department website; and

(b) Approved limits of mycotoxin. The sample and related lot fail testing for mycotoxin if the results exceed the following limits:

(i) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance;

(ii) Ochratoxin A: 20 µg/kg of substance.

(c) Approved limits for heavy metals. The sample and related lot fail testing for heavy metals if the results exceed the following limits:

Metal	µ/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(2) The producer must inform the department if they wish to participate in the voluntary certification for human consumption at the time of sampling as specified under WAC 16-306-080.

(3) The licensee will be required to reimburse the department or the approved laboratory for the actual costs incurred for conducting such tests.

NEW SECTION

WAC 16-306-110 Hemp for human consumption as food. The whole hemp plant may be used as food for human consumption. The department shall regulate the processing of the hemp for food products allowable under federal law, in the same manner as other food processing under chapters 15.130, 69.07, and 69.22 RCW.

NEW SECTION

WAC 16-306-120 THC certification. (1) If the hemp meets THC concentration requirements in this chapter, the department will issue a document of certification attesting that hemp has been tested for THC concentration and is in compliance with this chapter.

(2) No hemp may leave a registered land area identified on a license without being issued THC certification by the department.

(3) Hemp plant material from different registered land areas or lots may not be combined until the department issues certification for each field, lot, or registered land area. Hemp seeds and grain are excluded from this restriction.

NEW SECTION

WAC 16-306-130 Transporting hemp. (1) Hemp produced under this chapter may not be transported from a registered land area as identified on the license until THC certification by the department as specified in WAC 16-306-120 is obtained by the applicable licensee prior to transport. During transport of hemp off a producer's registered land area, including to a processor, the person in possession of the hemp during transport must have in his or her possession either:

(a) Copies of the hemp producer license and department-issued THC certification, as required by this chapter; or

(b) A bill of lading or other proper documentation demonstrating that the hemp was legally imported or is otherwise legally present in the state of Washington under applicable state and federal laws relating to hemp.

(2) Any hemp from a licensed Washington producer that is found in Washington state at any location off the premises of a registered land area of a licensee without department-issued THC certification as specified in WAC 16-306-120 is deemed to be contraband and subject to seizure by the Washington state patrol or any law enforcement officer. Any such contraband material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the hemp license.

NEW SECTION

WAC 16-306-140 Hemp producer license fees. (1) Effective January 1, 2020, license fees are as follows:

Annual License Fee	License Modification Fee
\$750	\$200/1

(2) Effective June 1, 2020, license fees are as follows:

Annual License Fee	License Modification Fee	Late License Fee (After March 31)
\$1200	\$200/1	\$200/2

/1 See WAC 16-306-050(8).

/2 In addition to license fee.

NEW SECTION

WAC 16-306-150 Hemp inspection fees. (1) Fees for hemp inspections are paid by the licensee.

(2) No renewal licenses will be issued until all fees due to the department are paid in full.

(3) Hemp inspection fees are:

(a) \$200.00 per inspection; plus

(b) Time and mileage per inspection. All time will be charged at a rate of forty dollars per hour. Mileage will be charged at the rate established by the Washington state office of financial management.

NEW SECTION

WAC 16-306-160 Hemp THC testing fees. (1) Hemp will be tested for THC concentration in a department-run or approved laboratory as determined by the department using testing methods approved by the department.

(2) Hemp testing will take place at times and on dates determined by the department.

(3) Fees for hemp THC tests are paid by the licensee.

(4) No renewal licenses will be issued until all fees due to the department are paid in full.

(5) THC concentration testing fees for hemp when tested at the department's laboratory are established on a sliding rate scale. THC concentration testing will be scheduled by the department based on the availability of laboratory resources. Individual samples may be batched with samples from the same or different licensees in order to reduce the overall cost

of the testing. For the purposes of this section, "batch" means a group of samples that are tested by the department on the same day, using the same equipment calibration and testing supplies to test each sample independently from other samples in the batch. The department will bill each licensee for the samples that licensee provides, based on batch size at the time of testing as shown in the following table:

Batch Size	Testing Fee Per Sample
Batch of 1 sample	\$1,000
Batch of 2 samples	\$500
Batch of 3 samples	\$334
Batch of 4 samples	\$250
Batch of 5 samples	\$200

(6) When THC concentration testing is performed at department-approved laboratories, testing fees will be subject to actual laboratory costs, including sample transportation.

NEW SECTION

WAC 16-306-170 Hemp noncompliance for THC concentration. (1)(a) If a licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to suspension or revocation of their license. The lot must be destroyed or disposed of in a manner approved by the department. If determined to be appropriate, the department may give notice of noncompliance to appropriate law enforcement agencies and the Washington state liquor and cannabis board, with a summary of the actions taken to destroy the noncompliant hemp.

(b) Producers must document the destruction or disposal of all noncompliant hemp. This documentation must be submitted to the department following the completion of the destruction or disposal process.

(2) If a licensee's hemp tests higher than 0.3 percent but less than 0.5 percent THC concentration, the licensee may either request a THC retest within thirty days or resampling of the same lot, at their own expense.

(3) If at any time a licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to revocation or suspension of their license.

NEW SECTION

WAC 16-306-180 License denial, suspension or revocation, and right to adjudicative proceeding. Upon notice of intent by the department to an applicant to deny a license, notice of intent to a licensee to suspend or revoke a license, or notice of intent for destruction of a hemp material or crop, a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and chapter 16-08 WAC.

NEW SECTION

WAC 16-306-190 Suspension of hemp license for noncompliance with a child support order. (1) If the department receives notice under RCW 74.20A.320 that a

licensee is not in compliance with a child support order, the department will suspend or not renew the licensee's hemp license(s) until the department of social and health services provides the department with a release stating that the licensee is in compliance with the child support order. If a licensee's license is suspended, all hemp crops and products in the licensee's possession must remain on the licensee's registered land area until the suspension is lifted.

(2) The department may renew, reinstate, or otherwise extend the licensee's hemp license(s) upon receipt of a copy of the release specified in subsection (1) of this section.

NEW SECTION

WAC 16-306-200 Corrective action plan. (1) A hemp licensee may be subject to a corrective action plan established by the department to correct negligent violations of this chapter including, but not limited to:

(a) Failing to provide a legal description of land on which the producer produces hemp;

(b) Failing to obtain a license or other required authorization from the department; or

(c) Producing Cannabis sativa L. with delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

(2) A hemp licensee shall comply with a corrective action plan established by the department to correct the negligent violation, including:

(a) A reasonable date by which the hemp producer shall correct the negligent violation;

(b) A requirement that the hemp producer shall periodically report to the department, as applicable, on the compliance of the hemp producer with the regulations under this chapter for a period of at least two calendar years.

(3) Licensees may be subject to license suspension or revocation for violations of chapter 15.140 RCW or this chapter for failing to comply with a corrective action plan.

(4) A hemp licensee that negligently fails to comply with the regulations under this chapter three times in a five-year period shall be ineligible to produce hemp for a period of five years beginning on the date of the third violation.

(5) The department will not consider hemp producers as committing a negligent violation by producing plants exceeding the acceptable hemp THC level if they use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis. For sampling and testing violations, the department will consider the entire harvest from a distinct lot in determining whether a violation occurred. This means that if testing determines that each sample of five plants from distinct lots has a THC concentration exceeding the acceptable hemp THC level (or 0.5 percent if the hemp producer has made reasonable efforts to grow hemp), USDA considers this as one negligent violation. If an individual produces hemp without a license, this will be considered one violation.

(6) Negligent violations are not subject to criminal enforcement. However, the department will report the production of hemp without a license issued by the department to the United States Department of Agriculture (USDA) and the Attorney General.

(7) Hemp found to be produced in violation of this chapter such as hemp produced on a property not disclosed by the licensed producer, or without a license, would be subject to the same disposal or destruction as for hemp above the acceptable hemp THC level.

NEW SECTION

WAC 16-306-210 Culpable violations. If it is determined a violation was committed with a culpable mental state greater than negligence, meaning, acts made intentionally, knowingly or with recklessness, WSDA will report the violation to USDA, the attorney general, and the local law enforcement officer as applicable.

NEW SECTION

WAC 16-306-220 Venue for legal action. The venue for any legal action under this chapter shall be Thurston County, Washington.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

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| <p>WAC 16-305-010 Purpose of chapter.</p> <p>WAC 16-305-015 Activities outside the scope of enforcement.</p> <p>WAC 16-305-020 Industrial hemp research program goals.</p> <p>WAC 16-305-030 Definitions.</p> <p>WAC 16-305-040 Industrial hemp license application.</p> <p>WAC 16-305-050 Qualifications of applicants.</p> <p>WAC 16-305-060 Industrial hemp grower license.</p> <p>WAC 16-305-070 Industrial hemp processor and marketer license.</p> <p>WAC 16-305-080 Industrial hemp combination license.</p> <p>WAC 16-305-090 Industrial hemp distributor license.</p> <p>WAC 16-305-100 Industrial hemp importer certificate.</p> <p>WAC 16-305-110 Industrial hemp business licenses and taxes.</p> <p>WAC 16-305-120 Suspension of industrial hemp licenses for noncompliance with a child support order.</p> <p>WAC 16-305-130 Fit for commerce certification.</p> <p>WAC 16-305-140 Transporting industrial hemp.</p> <p>WAC 16-305-150 Industrial hemp seed and propagules.</p> <p>WAC 16-305-160 Industrial hemp data and reporting requirements.</p> <p>WAC 16-305-170 Records retention.</p> <p>WAC 16-305-180 Industrial hemp for human consumption.</p> | <p>WAC 16-305-190 Industrial hemp inspection and sampling criteria.</p> <p>WAC 16-305-200 Industrial hemp lab testing criteria.</p> <p>WAC 16-305-210 Industrial hemp testing fees.</p> <p>WAC 16-305-220 Industrial hemp license fees.</p> <p>WAC 16-305-230 Industrial hemp noncompliance for THC concentration.</p> <p>WAC 16-305-240 Scope of enforcement.</p> <p>WAC 16-305-242 Enforcement actions subject to availability of funds.</p> <p>WAC 16-305-245 Determination of civil penalties and license enforcement penalties.</p> <p>WAC 16-305-250 Monetary penalties, license denial, suspension or revocation, and right to adjudicative proceeding.</p> <p>WAC 16-305-251 Category 1 violations.</p> <p>WAC 16-305-252 Category 2 seed distributor violations.</p> <p>WAC 16-305-253 Category 3 grower or processor violations.</p> <p>WAC 16-305-254 Category 4 license violations.</p> <p>WAC 16-305-255 Category 5 regulatory violations.</p> <p>WAC 16-305-256 Penalty for failure to follow industrial hemp destruction order.</p> <p>WAC 16-305-257 Other dispositions of alleged violations that the department may choose.</p> <p>WAC 16-305-260 Venue for legal action.</p> |
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**WSR 20-02-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-308—Filed December 19, 2019, 1:36 p.m., effective December 19, 2019, 1:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational razor clam rules.

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

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 open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from this beach

to be safe for human consumption. 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: December 19, 2019.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. December 23, 2019 through 11:59 p.m. December 23, 2019, and 12:01 p.m. December 26, 2019 through 11:59 p.m. December 29, 2019, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. December 23, 2019 through 11:59 p.m. December 23, 2019, and 12:01 p.m. December 26, 2019 through 11:59 p.m. December 29, 2019, razor clam digging is permissible in Razor Clam Area 2. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. December 26, 2019 through 11:59 p.m. December 26, 2019, and 12:01 p.m. December 28, 2019 through 11:59 p.m. December 28, 2019, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. December 23, 2019 through 11:59 p.m. December 23, 2019, and 12:01 p.m. December 27, 2019 through 11:59 p.m. December 27, 2019, and 12:01 p.m. December 29, 2019 through 11:59 p.m. December 29, 2019, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m., December 30, 2019:

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

WSR 20-02-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-311—Filed December 19, 2019, 4:01 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: Return Marine Area 13 recreational salmon rules to permanent rule.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000N.

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 Marine Area 13 to permanent rule. The conservation measures taken in Marine Area 13 are no longer needed as a majority of returning chum have entered streams to spawn. Chum encounters with anglers are expected to be extremely low, if any in the saltwater. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 19, 2019.

Kelly Susewind
Director

REPEALER

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

WAC 220-313-06000N Puget Sound salmon—Saltwater seasons and daily limits. (19-285)

WSR 20-02-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-313—Filed December 20, 2019, 2:39 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: Amend recreational steelhead fishing rules for the Snake River and its tributaries.

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

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

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

Reasons for this Finding: This emergency rule is needed to close or reduce daily limits of hatchery steelhead in the Snake River and its tributaries, necessitated by updated, in season summer steelhead run information. The Snake River from the mouth to the Couse Creek Boat Ramp will remain closed to fishing for salmon and steelhead until March 31, 2020. The Washington department of fish and wildlife (WDFW) has reviewed the adult run size for both A and B-run summer steelhead passing Ice Harbor Dam and has two conservation concerns within this regulatory reach:

(1) Asotin Creek Steelhead - Asotin Creek has a wild population of steelhead that is predicted to have very low returns this year (in season updates indicate less than two hundred adult fish). Any additional fishing between Clarkston and Couse Creek could have negative impacts on this population.

(2) Snake River B-run Steelhead - Conservation measures have been in place to protect natural and hatchery B-run steelhead since July in the Columbia River and September in the Snake River. The department believes it is important to provide continued protection for these fish within the Columbia and Snake rivers to maximize survival and return of both wild and hatchery origin B-run steelhead.

The Snake River from the Couse Creek Boat Ramp to the Idaho/Oregon border will remain open to steelhead angling under a one fish daily limit. This portion of the river has adequate wild and hatchery A-run steelhead present to allow for limited angling opportunity. There are very few B-run steelhead present in this reach of the river allowing for very little conservation risk in allowing a limited fishery. These restrictions are in place to ensure adequate passage and survival into the upper basin of A-run steelhead. WDFW is confident that implementing this rule will provide for adequate survival of wild and hatchery steelhead to help to ensure that escapements are met in all hatcheries and wild population groups within the Snake River basin.

This rule also reduces daily limits of hatchery steelhead within Snake River tributaries (Grande Ronde, Touchet, Tucannon, and Walla Walla rivers) due to upper Columbia and Snake River summer steelhead returns that have fallen

well below the preseason prediction. The final count for these summer run fish over Bonneville Dam is less than seventy-eight thousand fish, (the preseason forecast was for over one hundred eighteen thousand. Reduced limits for these streams are intended to ensure reaching hatchery brood escapement needs and limiting impacts to wild steelhead.

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: December 20, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000V Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective January 1, 2020:

(1) **Grande Ronde River (Asotin County): from the mouth to the Washington/Oregon boundary:** Effective immediately through April 15, 2020: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead after their daily limit has been retained.

(2) **Snake River (Franklin/Walla Walla Counties):**

(a) **From the mouth (Burbank-to-Pasco railroad bridge at river mile 1.25) to Couse Creek Boat Ramp:** Effective Immediately through March 31, 2020: Closed to fishing for and retaining steelhead.

(b) **From Couse Creek Boat Ramp to ID/OR border:** Effective immediately through March 31, 2019: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead after their daily limit has been retained.

(3) **Touchet River (Walla Walla County): from mouth to the confluence of North and South Forks:** Effective immediately through April 15, 2020: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead after their daily limit has been retained.

(4) **Tucannon River (Columbia/Garfield Counties): from mouth to the Tucannon Hatchery Road Bridge:** Effective immediately through April 15, 2020: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead after their daily limit has been retained.

(5) **Walla Walla River (Walla Walla County): from mouth to the Washington/Oregon border:** Effective immediately through April 15, 2020: Steelhead daily limit is

1 hatchery steelhead, anglers must stop fishing for steelhead after their daily limit has been retained.

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

REPEALER

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

WAC 220-312-05000R Freshwater exceptions to statewide rules—Eastside. (19-248)

The following section of the Washington Administrative Code is repealed effective April 16, 2020:

WAC 220-312-05000V Freshwater exceptions to statewide rules—Eastside. (19-313)

WSR 20-02-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-312—Filed December 20, 2019, 2:43 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: Amend recreational salmon rules for the Columbia River.

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

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

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

Reasons for this Finding: Conservation measures have been in place since July to protect low returns of steelhead within the Columbia and Snake river basins. Protection for these fish will maximize survival and help ensure hatchery B-index broodstock collection 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 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: December 20, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000D Freshwater exceptions to statewide rules—Columbia Notwithstanding the provisions of WAC 220-312-060:

(1) From McNary Dam upstream to the Hwy. 395 Bridge (Pasco/Kennewick): Effective January 1 through March 31, 2020: Closed to angling for and retention of steelhead.

(2) From the Hwy. 395 Bridge (Pasco/Kennewick) to Old Hanford townsite powerline crossing: Effective January 1 through April 15, 2020: Closed to angling for and retention of steelhead.

REPEALER

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

WAC 220-312-06000B Freshwater exceptions to statewide rules—Columbia (19-263)

The following section of the Washington Administrative Code is repealed effective April 16, 2020:

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

WSR 20-02-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-318—Filed December 20, 2019, 2:48 p.m., effective December 23, 2019]

Effective Date of Rule: December 23, 2019.

Purpose: Amend commercial sea urchin rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000S; 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 Sea Urchin District 3 and Marine Fish-Shellfish Management and Catch Reporting Area 23A

of District 2, because the quota for red sea urchin in these areas has been reached. Harvestable surpluses of sea urchin exist in the districts specified. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 20, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000T Commercial sea urchin fishery. Notwithstanding the provisions of WAC 220-340-750, effective December 23, 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 red sea urchin harvest seven days-per-week: Sea Urchin District 1; Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23B, 25A, 25B in District 2; and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) 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.

(4) The maximum cumulative landings for red sea urchin and green sea urchin for each weekly fishery opening period

is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 23, 2019:

WAC 220-340-75000S Commercial sea urchin fisheries.
(19-298)

WSR 20-02-044

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 23, 2019, 9:12 a.m., effective December 28, 2019]

Effective Date of Rule: December 28, 2019.

Purpose: The developmental disabilities administration (DDA) is amending sections in chapter 388-845 WAC as part of the administration's waiver renewal process. These emergency rules reflect changes approved by the Centers for Medicare and Medicaid Services (CMS) on July 30, 2019, effective September 1, 2019. This second emergency rule filing is necessary to keep these rules in effect until DDA completes the permanent rule-making process.

DDA filed a CR-102 Proposed rule making on December 3, 2019, as WSR 19-24-082. A public hearing is scheduled for January 22, 2020.

Citation of Rules Affected by this Order: Amending WAC 388-845-0030, 388-845-0055, 388-845-0230, 388-845-0415, 388-845-0425, 388-845-0900, 388-845-0910, 388-845-1100, 388-845-1110, 388-845-1150, 388-845-1190, 388-845-1191, 388-845-1192, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-2000, 388-845-2005, 388-845-2010, 388-845-2160, and 388-845-2170.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.120, 42 C.F.R. 441 Subpart G.

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

Reasons for this Finding: DDA must not authorize waiver services unless they are part of a waiver application approved by CMS. CMS has approved DDA's individual and family services waiver application. Enacting these rules on an emergency basis is necessary for DDA to provide the services approved by CMS. If DDA does not immediately enact these rules, DDA risks losing federal funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 21, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 21, Repealed 0.

Date Adopted: December 18, 2019.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? (1) You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

(a) You have been determined eligible for DDA services per RCW 71A.10.020.

(b) You have been determined to meet ICF/IID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(c) You meet disability criteria established in the Social Security Act.

(d) You meet financial eligibility requirements as defined in WAC 182-515-1510.

(e) You choose to receive services in the community rather than in an ICF/IID facility.

(f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan/individual support plan.

(g) You are not residing in hospital, jail, prison, nursing facility, ICF/IID, or other institution.

(h) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:

(i) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(ii) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(iii) You live with your family; and

(iv) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

(2) For ~~the~~ individual and family services waiver (~~funded services~~), you must meet the criteria in subsection (1) of this section and also(~~(=~~

~~(a))~~ live in your family home(~~(=and~~

~~(b) Are age three or older~~)).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0055 How do I remain eligible for the waiver? (1) Once you are enrolled in a DDA HCBS waiver,

you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(a) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements;

(b) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320(3), or your health and welfare needs require monthly monitoring, which will be documented in your client record;

(c) You complete an in-person DDA assessment/reassessment interview per WAC 388-828-1520.

(2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

(3) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and(~~(=~~

~~(a))~~ live in (~~the~~) your family home(~~(=and~~

~~(b) Be age three or over~~)).

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver? (1) The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
Community engagement	
Environmental adaptations	
Occupational therapy	
Peer mentoring	
Person-centered plan facilitation	
Physical therapy	
Positive behavior support and consultation	
Respite care	
Skilled nursing	
Specialized clothing	
Specialized medical equipment and supplies	

SERVICE	YEARLY LIMIT
Specialized psychiatric services	
Speech, hearing, and language services	
Staff and family consultation and training	
Supported parenting services	
((Therapeutic equipment and supplies))	
Transportation	
Vehicle modifications	
Wellness education	
Risk assessment	Limits determined by DDA. Costs are excluded from the annual allocation.
BEHAVIORAL HEALTH STABILIZATION SERVICES:	
<u>Crisis diversion bed services</u>	
Positive behavior support and consultation	
Specialized psychiatric services	

(2) Your IFS waiver services annual allocation is based upon the DDA assessment under chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0415 What is assistive technology? Assistive technology consists of items, equipment, or product systems, not related to a client's physical health, that are used to increase, maintain, or improve functional capabilities of waiver participants, as well as ((services)) supports to directly assist the participant ((and caregivers)) to select, acquire, and use the technology. Assistive technology is available in the CIIBS and IFS waivers, and includes the following:

(1) The evaluation of the needs of the waiver participant, including a functional evaluation of the participant in the participant's customary environment;

- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for the participant and/or if appropriate, the participant's family; and
- (6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of individuals with disabilities.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0425 Are there limits to the assistive technology you may receive? The assistive technology you may receive has the following limits:

- (1) Assistive technology is limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.
- (2) Clinical and support needs for assistive technology ~~((are))~~ must be identified in your DDA assessment and documented in the person-centered service plan.
- ~~((2))~~ (3) DDA requires your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:
 - (a) The treating professional has personal knowledge of and experience with the requested assistive technology; and
 - (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.
- ~~((3))~~ (4) Assistive technology requires prior approval by the DDA regional administrator or designee.
- ~~((4))~~ (5) DDA may require a written second opinion from a DDA-selected professional.
- ~~((5))~~ (6) The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.
- ~~((6))~~ (7) Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0900 What are environmental adaptations? (1) Environmental adaptations provide physical adaptations ~~((within the physical structure of the home, or outside the home to provide access to the home. The need must be identified by the DDA assessment and the participant's))~~ to the dwelling required by the individual's person-centered service plan((-)) needed to:

(a) Ensure the health, welfare, and safety of the individual;

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the dwelling; and

(c) Increase the individual's independence inside the dwelling or outside the dwelling to provide access to the dwelling.

(2) Examples of environmental adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental adaptations are available in all of the DDA HCBS waivers.

~~((3) An environmental adaption must be necessary to:~~

~~(a) Maintain the health, welfare, and safety of the participant, the participant's caregiver, or both; or~~

~~(b) Increase the participant's independence in the home.))~~

(4) Only the children's intensive in-home behavioral support (CIIBS) and individual and family services (IFS) waivers may include adaptations to the ~~((home))~~ dwelling necessary to prevent or repair property destruction caused by the participant's behavior, as addressed in the participant's positive behavior support plan.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0910 What limits apply to environmental adaptations? The following service limits apply to environmental adaptations:

(1) Clinical and support needs for an environmental ~~((adaptations))~~ adaption must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) One thousand five hundred dollars or less, one bid is required;

(b) More than one thousand five hundred dollars and equal to or less than five thousand dollars, two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

(4) DDA may require an occupational therapist, physical therapist, or construction consultant to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(5) Environmental adaptations to the home are excluded if they are of general utility without direct ~~((medical or remedial))~~ benefit to the individual related to their developmental

disability, such as cosmetic improvements to the dwelling, or general home improvements, such as carpeting, roof repair, or central air conditioning.

(6) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to ~~((authorizing))~~ final payment for work.

(7) The condition of the dwelling or other projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA.

(8) Location of the dwelling in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

(9) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

(10) Environmental adaptations must not add to the total square footage of the ~~((home))~~ dwelling.

(11) The dollar amounts for aggregate services in your basic plus waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

(12) For core, community protection, and CIIBS waivers, annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

(13) Damage prevention and repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;

(b) Limited to the dollar amounts of the IFS waiver participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the dwelling must be addressed in a positive behavior support plan prior to the repair of damages;

(d) Repairs to personal property such as furniture and appliances are excluded; and

(e) Repairs due to normal wear and tear are excluded.

(14) The following adaptations are not covered as an environmental adaption:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, generators, or ceiling fans; ~~((and))~~

(d) Roof repair or siding;

(e) Deck construction or repair; and

(f) Jetted tubs or saunas.

(15) Environmental adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1100 What are behavioral health crisis diversion bed services? Behavioral health crisis diversion bed services are ~~((temporary))~~ short-term emergent resi-

dential ~~((and behavioral))~~ services that may be provided in a client's home, licensed or certified setting, or state operated setting. These services are available to eligible clients ~~((who are))~~ whose current living situation is disrupted and the client is at risk of ~~((serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization))~~ institutionalization. These services are available in all ~~((four))~~ five HCBS waivers administered by DDA as behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1110 What are the limits of behavioral health crisis diversion bed services? (1) Clinical and support needs for behavioral health crisis diversion bed services are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan ~~((individual support plan))~~.

(2) Behavioral health crisis diversion bed services are intermittent and temporary. ~~((The duration and amount of services you need to stabilize your crisis is determined by))~~ A behavioral health professional ~~((and/or))~~ may determine your need for behavioral health crisis diversion bed services. DDA determines the duration and amount of behavioral health crisis diversion bed services you will receive.

(3) ~~((These services are available in the CIIBS, basic plus, core, and community protection waivers administered by DDA as behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.~~

(4)) The costs of behavioral health crisis diversion bed services do not count toward the dollar amounts for aggregate services in the basic plus waiver or the annual allocation in the individual and family services waiver.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1150 What are behavioral health stabilization services? (1) Behavioral health stabilization services assist persons who are experiencing a behavioral health crisis.

(2) Behavioral health stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for behavioral health stabilization services if:

(a) A behavioral health professional or DDA has determined the participant is at risk of institutionalization or hospitalization;

(b) The participant needs:

(i) Positive behavior support and consultation;

(ii) Specialized psychiatric services for people age twenty-one and older; or

(iii) Behavioral health crisis diversion bed services available to participants on the individual and family services, basic plus, core, CIIBS, and community protection waivers.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1190 What is peer mentoring? (1) Peer mentoring is a form of mentorship that takes place between a person who ~~((is living))~~ has lived through ~~((the))~~ an experience ~~((of having a developmental disability or family member of a person who has a developmental disability))~~ (peer mentor) and a person who is new to that experience ~~((the peer))~~ mentee. Peer mentors use their experience to inform, support, and train mentees to successfully navigate new experiences related to or impacted by their disability.

(2) A peer ~~((mentors utilize their personal experiences to))~~ mentor may provide support and guidance to a waiver participant and the participant's family ~~((members of a waiver participant))~~.

(3) A peer ~~((mentors))~~ mentor may ~~((orient))~~ connect a waiver participant to local community services, programs, and resources and ~~((provide answers to participants'))~~ answer participant questions or suggest other sources of support.

(4) Peer mentoring is available in the IFS waiver.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1191 Who are qualified providers of peer mentoring? ~~((Qualified providers include organizations who are contracted))~~ An individual or organization must contract with DDA to provide peer mentoring support and training to ~~((individuals))~~ people with developmental disabilities or to families with a member with a developmental disability.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1192 What ~~((limitations are there for))~~ limits apply to peer mentoring? (1) Support needs for peer mentoring are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan ~~((individual support plan))~~.

(2) DDA does not contract with a peer ~~((mentors cannot))~~ mentor to mentor their own family ~~((members))~~ member.

(3) ~~((The dollar amounts for the))~~ A waiver participant's ~~((annual allocation in the IFS waiver limit the amount of))~~ peer mentoring ~~((service that))~~ services are limited to the ~~((participant is authorized to receive))~~ participant's annual IFS waiver allocation.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are durable and nondurable medical equipment, or equipment necessary to prevent institutionalization, not available through the medicaid ~~((or the))~~ state plan or are in excess of what is available through the medicaid state plan benefit which enables individuals ~~((to))~~:

(a) To increase their abilities to perform their activities of daily living; (~~or~~)

(b) To perceive, control, or communicate with the environment in which they live; or

(c) On the IFS waiver only, to improve daily functioning through sensory integration when prescribed in a written therapeutic plan by the current treating professional.

(2) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500 respectively.

(3) Also included are items necessary for life support and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) of this section.

(4) Specialized medical equipment and supplies include the maintenance and repair of specialized medical equipment not covered through the medicaid state plan.

(5) Specialized medical equipment and supplies are available in all DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies? (1) The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with DDA or have a state contract as a Title XIX vendor.

(2) For IFS only, the provider of specialized medical equipment and supplies under WAC 388-845-1800 (1)(c) must be contracted with DDA as a provider of specialized goods and services.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1810 Are there limits to the specialized medical equipment and supplies you may receive? The following limits apply to the specialized medical equipment and supplies you may receive:

(1) ~~((Clinical and))~~ Habilitative support needs for specialized medical equipment and supplies are limited to those identified in your DDA person-centered assessment and documented in your person-centered service plan.

(2) Specialized medical equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

(3) DDA may require a second opinion by a DDA-selected provider.

(4) Items must be of direct medical or remedial benefit to you and necessary as a result of your disability.

(5) Medications and vitamins are excluded.

(6) The dollar amounts for aggregate services in your basic plus waiver limit the amount of service you may receive.

(7) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

(8) Items excluded from specialized equipment and supplies include nonspecialized recreational equipment, such as trampolines, swing sets, and hot tubs.

(9) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-2000 What is staff and family consultation and training? (1) Staff and family consultation and training is professional assistance, not covered by the medicaid state plan, to families or direct service providers to help them (~~(better)~~) meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation and training is available in all DDA HCBS waivers.

(3) ~~((Staff and family consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of a participant as outlined in the participant's person-centered service plan.~~

(4) Staff and family consultation and training ((includes)) is consultation and guidance about one or more of the following:

(a) Health and medication (~~((monitoring))~~);

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) Positive behavior support;

(e) Augmentative communication systems;

(f) Diet and ~~((nutritional guidance))~~ nutrition;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental ~~((consultation))~~ safety; ~~((and))~~

(j) Assistive technology safety; and

(k) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2005 Who is a qualified provider of staff~~(+)~~ and family consultation and training? To provide staff~~(+)~~ and family consultation and training, a provider must be contracted with DDA and one of the following licensed, registered, or certified professionals:

(1) Audiologist;

(2) Licensed practical nurse;

(3) Marriage and family therapist;

(4) Mental health counselor;

(5) Occupational therapist;

(6) Physical therapist;

(7) Registered nurse;

(8) Sex offender treatment provider;

(9) Speech~~(+)~~-language pathologist;

(10) Social worker;

(11) Psychologist;

(12) Certified American sign language instructor;

(13) Nutritionist;

- (14) Counselors registered or certified in accordance with chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only);
- (19) Psychiatrist; ~~((or))~~
- (20) Professional advocacy organization; or
- (21) Teacher certified under chapter 181-79A WAC.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-2010 Are there limits to the staff and family consultation and training you may receive? (1) Staff and family consultation and training are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff and family consultation and training.

(3) The dollar amounts for aggregate service in your basic plus waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of staff and family consultation and training you may receive.

(4) Under the basic plus waiver, individual and family counseling is limited to family members who:

- (a) Live with the participant; and
- (b) Have been assaulted by the participant and the assaultive behavior was:
 - (i) Documented in the participant's person-centered service plan; and
 - (ii) Addressed in the participant's positive behavior support plan or therapeutic plan.

(5) Staff and family consultation and training does not provide training necessary to meet contractual licensing or certification requirements.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2160 What is therapeutic equipment and supplies? (1) Therapeutic equipment and supplies are only available in the CIIBS ~~((and IFS waivers))~~ waiver.

(2) Therapeutic equipment and supplies are equipment and supplies that are necessary to implement a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the individual to a constructive activity, or a vestibular swing.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies? The following limits apply to your receipt of therapeutic equipment and supplies under the children's intensive in-home behavior support (CIIBS) ~~((and individual and family services (IFS) waivers))~~ waiver:

(1) DDA requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(2) DDA may require a second opinion from a DDA-selected professional.

~~(3) ((The dollar amount of your annual allocation in your IFS waiver limits the amount of therapeutic equipment and supplies you are authorized to receive.~~

~~(4))~~ Therapeutic equipment and supplies requires a prior approval by the DDA regional administrator or designee.

~~((5))~~ (4) Therapeutic equipment and supplies excludes nonspecialized recreational items such as trampolines, swing sets, and hot tubs.

WSR 20-02-048

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed December 23, 2019, 2:17 p.m., effective December 29, 2019]

Effective Date of Rule: December 29, 2019.

Purpose: Comply with the agreement between the department and family home child cares' representative to establish a partial monthly working connections and seasonal child care rate for school-age children effective September 1, 2019.

Citation of Rules Affected by this Order: Amending WAC 110-15-0003, 110-15-0190, 110-15-0205, and 110-15-3770.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065

Other Authority: Sections 225 and 943, chapter 415, Laws of 2019.

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

Reasons for this Finding: On August 28, 2019, department of children, youth, and families adopted rules to implement a partial day rate in accordance with chapter 415, Laws of 2019, and the interest arbitration award agreed to by the governor and the family home child cares' representative. These emergency rules are being extended while the department completes the permanent rule-making process.

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

Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

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

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

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

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

Date Adopted: December 23, 2019.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Able" means being physically and mentally capable of caring for a child in a responsible manner.

"Administrative error" means an error made by DCYF or DSHS through no fault of the consumer or provider.

"Approved activity" means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

"Authorization" means the transaction created by ((~~DSHS~~)) DCYF which allows the provider to claim payment during a certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved activity under WAC 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

"Benefit" means a regular payment made by a government agency on behalf of a person eligible to receive it.

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized to have in care at any given time.

"Collective bargaining agreement" or "CBA" means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person eligible to receive:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay the child care provider each month toward the cost of child care, whether provided under a voucher or contract.

"Days" means calendar days unless otherwise specified.

"DCYF" means the department of children, youth, and families.

"DSHS" means the department of social and health services.

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

"Eligibility" means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

"Employment" or "work" means engaging in any legal, income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. This includes unsubsidized employment, as verified by ((~~DSHS~~)) DCYF, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to himself or herself or another person. See RCW 74.04.004.

"Homeless" means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

"In-home/relative provider" or "family, friends, and neighbors (FFN) provider" means an individual who is exempt from child care licensing standards and is approved for working connections child care (WCCC) payment under WAC 110-15-0125.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"Living in the household" means people who reside at the same physical address.

"Lump-sum payment" means a single payment that is not anticipated to continue.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Overpayment" means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

"Parental control" means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"Program violation" means a failure to adhere to program requirements, which results in an overpayment.

"Sanction" means deterrent action imposed by the department to address a program violation finding.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child who is between five years of age through twelve years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

"Second tier eligibility" means an increased income limit for eligible families who reapply before the end of their current eligibility period.

"Self-employment" means engaging in any legal income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S., as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

"Sign" means placing a name or legal mark on a document by physically writing or using an electronic signature.

"State median income" means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

"TANF" means temporary assistance for needy families, a cash assistance program administered by DSHS.

"Technical assistance" means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

"To the extent of available funds" means one or more of the following:

- (a) Limited or closed enrollment;

- (b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or

- (c) Subject to a waiting list.

"Typical school day" means the attendance of children at school for a period of at least five hours per day on one or more of the following days: Monday, Tuesday, Wednesday, Thursday, or Friday.

"Unintentional" means not done willfully or on purpose.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits when funding becomes available.

"WCCC" means the working connections child care program, a child care subsidy program described in part II of this chapter that assists eligible families to pay for child care.

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0190 WCCC benefit calculations. (1) The amount of care a consumer may receive is determined by ((DSHS)) DCYF at application or reapplication. Once the care is authorized, the amount will not be reduced during the eligibility period unless:

- (a) The consumer requests the reduction;
- (b) The care is for a school-aged child as described in subsection (3) of this section; or
- (c) Incorrect information was given at application or reapplication.

(2) To determine the amount of weekly hours of care needed, ((DSHS)) DCYF reviews:

- (a) The consumer's participation in approved activities and the number of hours the child attends school, including home school, which will reduce the amount of care needed.

- (b) In a two parent household, the days and times approved activities overlap, and only authorize care during those overlapping times. The consumer is eligible for full-time care if overlapping care totals one hundred ten hours in one month.

- (c) ((DSHS)) DCYF will not consider the schedule of a parent in a two parent household who is not able to care for the child.

(3) Full-time care for a family using licensed providers is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

- (a) Twenty-three full-day units per month will be authorized when the child needs care five or more hours per day;

- (b) Thirty half-day units per month will be authorized when the child needs care less than five hours per day;

- (c) Forty-six half-day units per month will be authorized during the months of June, July, and August for a school-aged child who needs five or more hours of care;

(4) Partial day monthly unit.

(a) One monthly unit per month will be authorized for a school-age child attending a licensed family home child care when the child is:

- (i) Authorized for care with only one provider;

- (ii) Eligible for a full-time authorization and is in care less than five hours on a typical school day; and

(iii) Expected to need care before and after school

(b) The monthly unit is prorated for partial months of authorization.

(c) Only one monthly unit per month may be authorized for a child.

~~((4))~~ (4) Supervisor approval is required for additional days of care that exceeds twenty-three full days, ~~((30))~~ thirty half days, or one monthly unit per month ~~((3))~~ and

~~((16))~~ Care cannot exceed sixteen hours per day, per child.

~~((4))~~ (5) Full-time care for a family using in-home/relative providers (family, friends and neighbors) is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Two hundred thirty hours of care will be authorized when the child needs care five or more hours per day;

(b) One hundred fifteen hours of care will be authorized when the child needs care less than five hours per day;

(c) One hundred fifteen hours of care will be authorized during the school year for a school-aged child who needs care less than five hours per day and the provider will be authorized for contingency hours each month, up to a maximum of two hundred thirty hours;

(d) Two hundred thirty hours of care will be authorized during the school year for a school-aged child who needs care five or more hours in a day;

(e) Supervisor approval is required for hours of care that exceed two hundred thirty hours per month; and

(f) Care cannot exceed sixteen hours per day, per child.

~~((5))~~ (6) When determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month:

(a) A full-day unit will be authorized for each day of care that exceeds five hours;

(b) A half-day unit will be authorized for each day of care that is less than five hours; and

(c) A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.

~~((7))~~ (7) When determining part-time care for a family using in-home/relative providers:

(a) Under the provisions of subsection (2) of this section, ~~((DSHS))~~ DCYF will authorize the number of hours of care needed per month when the activity is less than one hundred ten hours per month; and

(b) The total number of authorized hours and contingency hours claimed cannot exceed two hundred thirty hours per month.

~~((7))~~ (8) ~~((DSHS))~~ DCYF determines the allocation of hours or units for families with multiple providers based upon the information received from the parent.

~~((9))~~ (9) ~~((DSHS))~~ DCYF may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC 110-15-0125, or an approved in-home/relative provider under WAC 110-16-0010. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

~~((9))~~ (10) Other fees ~~((DSHS))~~ DCYF may authorize to a provider are:

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

(d) Overtime care to a licensed provider who has a written policy to charge all families, when care is expected to exceed ten hours in a day; and

(e) Special needs rates for a child.

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.

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0205 Daily child care rates—Licensed or certified family home child care providers. (1) Base rate. DCYF pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table effective July 1, 2019:

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$31.25	\$31.25	\$26.79	\$25.89	\$22.32
	Half-Day	\$15.63	\$15.63	\$13.39	\$12.95	\$11.16
Spokane County	Full-Day	\$32.59	\$32.59	\$27.68	\$26.79	\$26.79
	Half-Day	\$16.29	\$16.29	\$13.84	\$13.39	\$13.39
Region 2	Full-Day	\$32.14	\$32.14	\$29.46	\$26.79	\$25.00
	Half-Day	\$16.07	\$16.07	\$14.73	\$13.39	\$12.50
Region 3	Full-Day	\$42.86	\$42.86	\$37.50	\$36.25	\$29.38
	Half-Day	\$21.43	\$21.43	\$18.75	\$18.13	\$14.69
Region 4	Full-Day	\$54.37	\$54.37	\$48.70	\$41.07	\$32.31
	Half-Day	\$27.19	\$27.19	\$24.35	\$20.54	\$16.16

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 5	Full-Day	\$37.07	\$37.07	\$34.90	\$31.25	\$26.79
	Half-Day	\$18.54	\$18.54	\$17.45	\$15.63	\$13.39
Region 6	Full-Day	\$33.93	\$33.93	\$31.25	\$28.41	\$25.89
	Half-Day	\$16.96	\$16.96	\$15.63	\$14.20	\$12.95

(c) The maximum child care subsidy daily rate for that child as listed in the following table beginning July 1, 2020:

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$33.13	\$33.13	\$28.39	\$27.45	\$23.66
	Half-Day	\$16.56	\$16.56	\$14.20	\$13.72	\$11.83
Spokane County	Full-Day	\$34.54	\$34.54	\$29.34	\$28.39	\$28.39
	Half-Day	\$17.27	\$17.27	\$14.67	\$14.20	\$14.20
Region 2	Full-Day	\$34.07	\$34.07	\$31.23	\$28.39	\$26.50
	Half-Day	\$17.04	\$17.04	\$15.62	\$14.20	\$13.25
Region 3	Full-Day	\$45.43	\$45.43	\$39.75	\$38.43	\$31.14
	Half-Day	\$22.71	\$22.71	\$19.88	\$19.21	\$15.57
Region 4	Full-Day	\$57.63	\$57.63	\$51.62	\$43.54	\$34.25
	Half-Day	\$28.82	\$28.82	\$25.81	\$21.77	\$17.13
Region 5	Full-Day	\$39.29	\$39.29	\$37.00	\$33.13	\$28.39
	Half-Day	\$19.65	\$19.65	\$18.50	\$16.56	\$14.20
Region 6	Full-Day	\$35.96	\$35.96	\$33.13	\$30.11	\$27.45
	Half-Day	\$17.98	\$17.98	\$16.56	\$15.06	\$13.72

(2) Effective July 1, 2019, ~~(the half-day rate is increased for)~~ family home providers in all regions and for all ages ~~((to))~~ will receive a partial-day rate that is seventy-five percent of the full-day rate when:

(a) The family home provider provides child care services for the child during a morning session and an afternoon session. A morning session ~~((shall begin))~~ begins at any time after 12:00 a.m. and end before 12:00 p.m. An afternoon session ~~((shall begin))~~ begins at any time after 12:00 p.m. and end before 12:00 a.m.;

(b) The child is absent from care in order to attend school or pre-school;

(c) The family home provider is not entitled to payment at the full-day rate; and

~~((e))~~ (d) In no event ~~((shall))~~ is a child care provider ~~((be))~~ entitled to two partial-day rates in a month totaling one hundred fifty percent of the daily rate.

(3) Partial day monthly unit.

(a) One monthly unit per month will be authorized for a school-age child attending a licensed family home child care when the child is:

(i) Authorized for care with only one provider;

(ii) Eligible for a full-time authorization and is in care less than five hours on a typical full-day school day; and

(iii) Expected to need care before and after school.

(b) The monthly unit is prorated for partial months of authorization.

(c) Only one monthly unit per month may be authorized for a child.

Partial-Day Monthly Rates				
	Jul 1, 2019 - June 30, 2020		July 1, 2020 - June 30, 2021	
	Sept - June	July - August	Sept - June	July - August
<u>Region 1</u>	<u>\$ 396.18</u>	<u>\$ 491.04</u>	<u>\$ 420.05</u>	<u>\$ 520.52</u>
<u>Spokane</u>	<u>\$ 475.48</u>	<u>\$ 589.38</u>	<u>\$ 503.88</u>	<u>\$ 624.58</u>

Partial-Day Monthly Rates				
	Jul 1, 2019 - June 30, 2020		July 1, 2020 - June 30, 2021	
	Sept - June	July - August	Sept - June	July - August
<u>Region 2</u>	\$ 443.75	\$ 550.00	\$ 470.46	\$ 583.00
<u>Region 3</u>	\$ 521.58	\$ 646.36	\$ 552.82	\$ 685.08
<u>Region 4</u>	\$ 573.63	\$ 710.82	\$ 607.98	\$ 753.50
<u>Region 5</u>	\$ 475.48	\$ 589.38	\$ 503.88	\$ 624.58
<u>Region 6</u>	\$ 459.59	\$ 569.58	\$ 487.11	\$ 603.90

~~((3)) (4)~~ The family home child care WAC ~~((110-300B-0010 and 110-300B-5550))~~ 110-300-0005 and 110-300-0355 allow providers to care for children from birth up to and including the end of their eligibility period after their thirteenth birthday. ~~((WAC 110-300B-0010 and 110-300B-5550 are superseded by WAC 110-300-0005 and 110-300-0355, respectively, effective August 1, 2019.))~~

~~((4)) (5)~~ If the family home provider cares for a child who is thirteen years of age or older, the provider must follow WAC ~~((110-300B-0050 and 110-300B-5625))~~ 110-300-0030 and 110-300-0355. A child who is thirteen years of age or older at application must meet the special needs requirement according to WAC 110-15-0220. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section and the five through twelve year age range column is used for comparison. ~~((WAC 110-300B-0050 and 110-300B-5625 are superseded by WAC 110-300-0300 and 110-300-0355, respectively, effective August 1, 2019.))~~

~~((5)) (6)~~ DCYF pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection ~~((6)) (7)~~ of this section).

~~((6)) (7)~~ DCYF cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

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

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

WAC 110-15-3770 Authorized SCC payments. The SCC program may authorize payments to licensed or certified child care providers for:

- (1) Basic child care either full-day or half-day, at rates listed in the chart in WAC ~~((170-290-0200 and 170-290-0205))~~ 110-15-0205:
 - (a) A full day of child care when a consumer's children need care for five to ten hours per day;
 - (b) A half day of child care when a consumer's children need care for less than five hours per day;

(c) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means twenty-three full day units if the child needs five or more hours of care per day or thirty half-day units if the child needs fewer than five hours of care per day;

(d) Beginning September 1, 2016, for school-aged children, ~~((DSHS))~~ DCYF will authorize and pay for child care as follows:

(i) ~~((DSHS))~~ DCYF will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and

(ii) ~~((DSHS))~~ DCYF will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year, until the following June. ~~((DSHS))~~ DCYF will send the consumer notification of the decrease as stated in WAC 170-290-0025. If the consumer's schedule has changed and the child continues to need full-day care during the school year, the consumer must request the increase and verify the need for full-day care.

(2) Effective July 1, 2019, family home providers in all regions and for all ages will receive a partial-day rate that is seventy-five percent of the full day rate when:

(a) Care is provided for the child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and end before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and end before 12:00 a.m.; and

(b) The provider is not entitled to payment at the full-day rate.

(3) A family home provider is not entitled to two partial-day rates totaling one hundred fifty percent of the daily rate.

(4) Partial day monthly unit.

(a) One monthly unit per month will be authorized for a school-age child attending a licensed family home child care when the child is:

(i) Authorized for care with only one provider;

(ii) Eligible for a full-time authorization and in care less than five hours of care on a typical school day; and

(iii) Expected to need care before and after school.

(b) The partial day monthly unit is prorated for partial months.

(c) Only one monthly unit per month may be authorized for a child.

(5) A registration fee, according to WAC ~~((170-290-0245))~~ 110-15-0245;

~~((3)) (6)~~ Subsidy rates for five-year old children according to WAC ~~((170-290-0185))~~ 110-15-0185;

~~((4))~~ (7) The field trip/quality enhancement fees in WAC ~~((170-290-0247))~~ 110-15-0247;

~~((5))~~ (8) The nonstandard hours bonus in WAC ~~((170-290-0249))~~ 110-15-0249; and

~~((6))~~ (9) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC ~~((170-290-0220, 170-290-0225, and 170-290-0230))~~ 110-15-0020, 110-15-0025, and 110-15-0230.

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

WSR 20-02-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-319—Filed December 24, 2019, 1:26 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: Amend Puget Sound recreational crab rules.

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

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

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

Reasons for this Finding: This emergency rule closes recreational crab harvest on the Everett Flats area of Marine Area 8-2 (defined as that portion east of a line from Howarth Park due north to the south end of Gedney Island and east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point on the Tulalip reservation). By comanager agreement, the Everett Flats area of Marine Area 8-2 will [be] closed to crab harvest after December 31, 2019, as provisioned in the 2019 Region 2E Management Plan to protect softshell crab. Final summer harvest estimates indicate that the recreational fisheries can remain open in the marine areas described in this regulation and contribute to achieving 50/50 harvest goal with the treaty tribes. 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: December 24, 2019.

Ron Warren
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000L Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective January 1 through January 31, 2020, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

Marine Area 8-1, Marine Area 8-2, except for Everett Flats (defined as that portion east of a line from Howarth Park due north to the south end of Gedney Island and that portion east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point on the Tulalip reservation), Marine Area 9 between the Hood Canal Bridge and a line projected from Olele Point to Foulweather Bluff, and Marine Area 12 north of a line projected due east from Ayock Point are open to fish for crab for personal use from January 1, 2020 through January 31, 2020.

REPEALER

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

WAC 220-330-04000K Crab—Areas and seasons—Personal use. (19-315)

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

WAC 220-330-04000L Crab—Areas and seasons—Personal use. (19-319)

WSR 20-02-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-320—Filed December 24, 2019, 3:25 p.m., effective December 28, 2019]

Effective Date of Rule: December 28, 2019.

Purpose: Amend Puget Sound commercial scallop rules.

Citation of Rules Affected by this Order: Amending WAC 220-340-610.

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

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

Reasons for this Finding: This emergency rule is needed to open the Puget Sound commercial scallop season. A harvestable surplus of pink and spiny scallops exists in the areas specified to allow for commercial harvest. 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: December 24, 2019.

Ron Warren
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-61000H Commercial scallop fishery—Puget Sound. Notwithstanding the provisions of WAC 220-340-610, effective December 28, 2019, until further notice, it is unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(2) Pink or spiny scallop harvest using shellfish diver gear is only allowed in Washington Department of Health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 25A and 25B, except as noted in (3) below.

(3) Pink or spiny scallop harvest using shellfish diver gear is also allowed within DOH Restricted Scallop Area 2 Rosario Strait, Restricted Scallop Area 3 Burrows Bay and Restricted Scallop Area 4 Lopez Island Southeast defined by the Washington Department of Health in Marine Fish/Shellfish Catch Reporting Areas 20B, 21A, 22A, 23A and 23B.

(4) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny

scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(5) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations and when pink or spiny scallops are onboard the harvest vessel.

WSR 20-02-069 EMERGENCY RULES BOARD OF

PILOTAGE COMMISSIONERS

[Filed December 26, 2019, 8:28 a.m., effective December 26, 2019, 8:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend WAC 363-116-082 Limitations on new pilots, to address limited training opportunities in the Duwamish Waterway due to reduced traffic.

Citation of Rules Affected by this Order: Amending WAC 363-116-082.

Statutory Authority for Adoption: Chapter 88.16 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: Due to limited training opportunities in the Puget Sound pilotage district, the board will limit the license for first year pilots in the Duwamish Waterway. The license restriction will prohibit first year pilots from piloting vessels greater than 3,000GT in the Duwamish Waterway. The restriction will be lifted through the license upgrade program developed by the board's trainee evaluation committee (TEC) for second year pilots. This emergency rule is necessary due to the advanced level of piloting skill required to navigate the Duwamish Waterway and lack of opportunities to obtain the required number of observation, training, and evaluation trips. Inadequate training opportunities in challenging waterways could put in jeopardy the board's mission of safety.

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

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

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

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

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

Date Adopted: December 16, 2019.

Jaimie Bever
Executive Director

AMENDATORY SECTION (Amending WSR 19-06-007, filed 2/22/19, effective 3/25/19)

WAC 363-116-082 Limitations on new pilots. (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during his/her first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by

including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and liquefied petroleum gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - License limitation periods. Except for trips being made for pilot license upgrades, licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels	Waterways
1	Piloting on vessels of any size prohibited	38,000 GT (ITC) except for passenger vessels which may only have a maximum size of 5000 GT (ITC)	<u>Prohibited in the Duwamish Waterway on vessels greater than 3,000 GT</u>
2	32,000 GT (ITC)	48,000 GT (ITC)	<u>No restrictions</u>
3	40,000 GT (ITC)	60,000 GT (ITC)	<u>No restrictions</u>
4	50,000 GT (ITC)	70,000 GT (ITC)	<u>No restrictions</u>
5	65,000 GT (ITC)	95,000 GT (ITC)	<u>No restrictions</u>

(3) Puget Sound pilotage district - Pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of eight trips to be made by each pilot in the last one hundred twenty days of each year of the license limitation periods specified in subsection (2) of this section. As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, or between the pilot station and a port. The supervising pilots shall complete and submit to the board an evaluation form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - License limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	32,000 GT (ITC) except that piloting on vessels of any size is prohibited through the Chehalis River Bridge unless vessel is in ballast and does not exceed 25,000 GT (ITC)
2	15,000 GT (ITC)	42,000 GT (ITC)
3	32,000 GT (ITC)	52,000 GT (ITC)
4	42,000 GT (ITC)	62,000 GT (ITC)
5	52,000 GT (ITC)	72,000 GT (ITC)

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - Pilot license upgrade requirements.

(a) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River Bridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of 32,000 GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make two license upgrade trips on tank vessels in excess of 15,000 GT (ITC) and two trips on other vessels in excess of 42,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and two of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the two upgrade trips upon other vessels in excess of 42,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make two license upgrade trips on tank vessels in excess of 32,000 GT (ITC) and two trips on other vessels in excess of 52,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and two of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 42,000 GT (ITC) and two trips on other vessels in excess of 62,000 GT (ITC).

(e) Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 52,000 GT (ITC) and two trips on other vessels in excess of 72,000 GT (ITC).

(f) If vessels are not available in the Grays Harbor pilotage district to allow a pilot to comply with (a) through (e) of this subsection in a timely manner, the board may designate substitute trips in the Puget Sound pilotage district as allowed by law and in so doing may specify the size of the vessel and any other characteristics of the trips that the board deems appropriate. Such designation shall be considered a modification of the pilot's state license to authorize the specified trips in the Puget Sound pilotage district.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he/she shall notify the board and request a revised schedule of limitations.

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that

he/she has completed all the required license upgrade trips and the vessel simulator courses.

WSR 20-02-075
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-314—Filed December 26, 2019, 4:49 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: Amend recreational fishing regulations in the Nooksack River.

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

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

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

Reasons for this Finding: This emergency rule is needed to close portions of the Nooksack River to the retention of hatchery steelhead because returns to the Nooksack River and to Kendall Hatchery are not meeting escapement goals. The closure is necessary to ensure natural escapement and 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 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: December 26, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000J Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective January 1 through January 31, 2020, the following waters are closed to the retention of hatchery steelhead:

(1) The Nooksack River from the mouth to the confluence of the North and South Forks.

(2) The North Fork Nooksack from the Highway 9 Bridge to Nooksack Falls.

(3) The Middle Fork Nooksack from the mouth to city of Bellingham diversion dam.

(4) The South Fork Nooksack from the mouth to Skookum Creek.

REPEALER

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

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

WSR 20-02-098

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed December 30, 2019, 3:50 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: The agency is intending to establish rules to comply with ESHB 1109, section 211(47), which provides funding for services identical to those services covered by the Washington state family planning waiver program to individuals who: (1) Are age twenty and older; (2) who are at or below two hundred sixty percent of the federal poverty level; (3) who are not covered by public or private insurance; and (4) who need family planning services and are not currently covered by or eligible for another medical assistance program for family planning.

Citation of Rules Affected by this Order: Amending WAC 182-532-510.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESHB 1109, section 211(47), chapter 415, Laws of 2019, operating budget.

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

Reasons for this Finding: This emergency is necessary to comply with the requirements in ESHB 1109, section 211(47), chapter 415. The agency is currently working through the permanent rule-making process for these rules. The pre-proposal statement of inquiry was filed under WSR 19-21-038 on October 8, 2019.

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

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

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

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

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

Date Adopted: December 30, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-18-024, filed 8/28/19, effective 10/1/19)

WAC 182-532-510 Family planning only programs—Eligibility. To be eligible for one of the family planning only programs listed in this section, a client must meet the qualifications for that program.

(1) **Family planning only - Pregnancy related program.**

(a) To be eligible for family planning only - Pregnancy related services, as defined in WAC 182-532-001, a client must be determined eligible for the Washington apple health for pregnant (~~(clients)~~) women program during the pregnancy, or determined eligible for a retroactive period covering the end of a pregnancy. See WAC 182-505-0115.

(b) A client is automatically eligible for the family planning only - Pregnancy related program when the client's pregnancy ends.

(c) A client may apply for the family planning only program in subsection (2) of this section up to sixty days before the expiration of the family planning only - Pregnancy related program.

(2) **Family planning only program.**

(a) To be eligible for family planning only services, as defined in WAC 182-532-001, a client must:

(i) ~~((Be a United States citizen, U.S. National, or "qualified alien" as described under WAC 182-503-0535;~~

~~((ii)))~~ Provide a valid Social Security number (SSN), unless ineligible to receive one, or meet good cause criteria listed in WAC 182-503-0515(2);

~~((iii)))~~ (ii) Be a Washington state resident, as described under WAC 182-503-0520;

~~((iv)))~~ (iii) Have an income at or below two hundred sixty percent of the federal poverty level, as described under WAC 182-505-0100;

~~((v)))~~ (iv) Need family planning services; and

~~((vi)))~~ (v) Have been denied apple health coverage within the last thirty days, unless the applicant:

(A) Is age eighteen (~~(and))~~ or younger and seeking services in confidence;

(B) Is a domestic violence victim who is seeking services in confidence; or

(C) Has an income of one hundred fifty percent to two hundred sixty percent of the federal poverty level, as described in WAC 182-505-0100.

Kelly Susewind
Director

(b) A client is not eligible for family planning only medical if the client is:

- (i) Pregnant;
- (ii) Sterilized;
- (iii) Covered under another apple health program that includes family planning services; or
- (iv) Covered by concurrent creditable coverage, as defined in RCW 48.66.020, unless they meet criteria in (a) ~~((v))~~ (v) of this subsection.

(c) A client may reapply for coverage under the family planning only program up to sixty days before the expiration of the twelve-month coverage period. The agency does not limit the number of times a client may reapply for coverage.

WSR 20-02-106
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-321—Filed December 31, 2019, 2:12 p.m., effective December 31, 2019, 2:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea urchin rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000T; 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 green sea urchins in Sea Urchin Districts 3 and 4, and Marine Fish-Shellfish Management and Catch Reporting Area 23A of District 2, because the quota for green sea urchin in these areas has been reached. Harvestable surpluses of sea urchin exist in the districts specified. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 31, 2019.

NEW SECTION

WAC 220-340-75000U Commercial sea urchin fishery. Notwithstanding the provisions of WAC 220-340-750, effective immediately, 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 red sea urchin harvest seven days-per-week: Sea Urchin District 1; Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23B, 25A, 25B in District 2; and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) 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, in District 2; 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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000T Commercial sea urchin fisheries.
(19-318)