

WSR 19-17-020
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed August 12, 2019, 6:26 p.m., effective August 12, 2019, 6:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Updating rules in early childhood education and assistance program (ECEAP), chapter 110-425 WAC, to include 2019 legislative session changes of 2SSB 5437 and SSB 5089 that modify requirements related to enrollment of children in the early childhood education and assistance program.

Citation of Rules Affected by this Order: New WAC 110-425-0085; and amending WAC 110-425-0030 and 110-425-0080.

Statutory Authority for Adoption: RCW 43.216.065, 43.216.525, 43.216.512.

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: Necessary for the preservation of the **general welfare** of the public, and observing the time requirements would be contrary to the public interest.

Reasons:

- Without emergency rules, ECEAP is unable to meet the intent of 2SSB 5437 and SSB 5089 for the 2019-20 school year. The earliest date that permanent rules could take effect is after enrollment requirements and timelines have passed. The legislature intended the department of children, youth, and families (DCYF) to implement, as soon as possible, these changes that remove barriers to high quality early learning opportunities that ECEAP provides and are proven to increase kindergarten readiness, family stability, and healthy outcomes for children and their families. Without emergency rules:
 - Contractors will have to turn away children and families transitioning from early support for infants and toddlers or early head start who will not have any services available to them for one full year.
 - Contractors will have to turn away children and families in the allowable category who have the opportunity to participate in ECEAP.
 - Contractors may not have enough funding to serve eligible, entitled children if they do not also have the funding for these allowed children.
 - There is high potential for family and community disruption due to DCYF needing to pull open slots away from contractors.
 - Washington state would be paying for unfilled seats when there are children available to be served.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, 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: August 12, 2019.

Brenda Villarreal
Rules Coordinator

[AMENDATORY SECTION (Amending WSR 19-03-041, filed 1/8/19, effective 2/8/19)]

WAC 110-425-0030 Definitions. (1) "Child allowed for enrollment" means a child that DCYF may permit to be enrolled in ECEAP under RCW 43.216.512, but who is not in the group that will be entitled to ECEAP beginning in the 2022-23 school year under RCW 43.216.556.

"Child eligible for enrollment" means a child who is eligible for ECEAP under RCW 43.216.505(4). This child is in the group that will be entitled to ECEAP beginning in the 2022-23 school year under RCW 43.216.556. Under RCW 43.216.514, a child eligible for enrollment must be given enrollment priority over a child allowed for enrollment. "Eligible child" will have the same meaning as "child allowed for enrollment."

"Contractor" means a public or private organization that contracts with the department of children, youth, and families to provide local ECEAP services.

(2) "Department" means the department of children, youth, and families.

(3) "ECEAP" means the early childhood education and assistance program.

(4) "Eligible organization" means public or private organizations including, but not limited to, school districts, educational service districts, community and technical colleges, local governments, nonprofit organizations, and for-profit organizations provided that their proposed ECEAP is free from religious instruction, activities, or symbolism.

"Federal poverty level" or "FPL" means the measure of income in relation to family size issued by the federal U.S. department of health and human services and used to calculate ECEAP income eligibility.

(5) "Performance standards" means the most current release of the ECEAP performance standards as incorporated into the ECEAP contract, which are accessible on the department's website.

[Statutory Authority: RCW 43.216.065, 43.216.512, and 43.216.525. WSR 19-03-041, § 110-425-0030, filed 1/8/19, effective 2/8/19. WSR 18-14-078, recodified as § 110-425-0030, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-01-098, § 170-100-030, filed 12/16/15, effective 1/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 07-20-034, § 170-

100-030, filed 9/25/07, effective 10/26/07. WSR 06-18-085, recodified as § 170-100-030, filed 9/5/06, effective 9/5/06. Statutory Authority: Chapter 28A.215 RCW. WSR 06-13-046, § 365-170-030, filed 6/16/06, effective 7/17/06. Statutory Authority: RCW 43.63A.060. WSR 99-19-176, § 365-170-030, filed 9/22/99, effective 10/23/99. Statutory Authority: RCW 28A.34A.060. WSR 88-18-039 (Order 88-04), § 365-170-030, filed 8/31/88. Statutory Authority: RCW 43.63A.060. WSR 87-04-007 (Order 87-02), § 365-170-030, filed 1/23/87.]

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.

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

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

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

[AMENDATORY SECTION (Amending WSR 19-03-041, filed 1/8/19, effective 2/8/19)]

WAC 110-425-0080 Eligibility for services Children eligible for enrollment. (1) A child is eligible for enrollment in ECEAP if the child is at least three years old by August 31st of the school year, is not age-eligible for kindergarten, and is either:

(a) From a family with income at or below one hundred ten percent of the federal poverty guidelines established by the U.S. department of health and human services;

(b) Qualified by a school district for special education services under RCW 28A.155.020. All children on a school district individualized education program (IEP) meet this requirement; or

~~(b) From a family with income at or below one hundred ten percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services; or~~

(c) From a family with income that exceeds one hundred ten percent federal poverty level ("over-income") and is homeless or is impacted by specific risk factors identified by incorporated into the department's that are linked by research to school performance, provided that prioritization system described in WAC 110-425-0085(4) which includes preference for enrollment of children from families with the lowest income, children in foster care, or children from families with multiple needs. No more than ten percent of slots statewide are enrolled with children eligible under this provision.

(2) ~~Contractors may provide ECEAP services to over-income children without IEPs as follows:~~

~~(a) Contractors must actively recruit and enroll income-eligible children within their service area.~~

~~(b) Contractors may enroll over-income children without IEPs up to the initial over-income limit assigned by the department to each contractor annually.~~

~~(i) This limit is based on contractor size; contractors with fewer funded ECEAP slots are allowed higher over-income percentages to provide flexibility to fill classes in rural areas.~~

~~(ii) For sites operated by tribes or tribal organizations, the department will set initial over-income limits at twenty-five percent.~~

~~(iii) The department may adjust limits midyear if slots are moved between contractors.~~

~~(e) Contractors may apply for additional over-income slots for the current year using the application provided by the department if:~~

~~(i) The contractor has enrolled all assigned over-income slots;~~

~~(ii) Additional funded slots are available; and~~

~~(iii) Efforts to recruit income-eligible children within the contractor's service area have been exhausted.~~

~~(d) The department will consider the following factors when reviewing applications for additional over-income slots:~~

~~(i) The statewide number of enrolled over-income children without IEPs must not equal more than twenty-five percent of the total funded ECEAP slots;~~

~~(ii) The similarity of the income levels, risk factors, and priority points of the children described in the applications and other ECEAP children enrolled in over-income slots;~~

~~(iii) The statewide plan to serve all income-eligible children from families who choose to participate;~~

~~(iv) The requesting contractor's need to fill slots to fully enroll a class to ensure access to services for income-eligible children; and~~

~~(v) The presence of unserved, income-eligible children in other locations in the state.~~

~~(3) Eligible, enrolled Enrolled children maintain their eligibility remain qualified for ECEAP until kindergarten, without reverification of income or risk factors. All previously enrolled children returning for a new school year may be reprioritized against new children when enrollment slots are limited.~~

~~(4) (3) Children are not eligible for may not be enrolled in ECEAP if they are enrolled in Head Start, however Head Start duration funds may be used to increase the length of the ECEAP preschool day when federal funds are provided to a contractor specifically for this purpose.~~

~~(5) (4) Children served by school district special education may be simultaneously enrolled in ECEAP.~~

~~(6) Once contractors have established a pool of eligible children, contractors must prioritize the eligible children for available ECEAP slots using the department priority point system which is based on state law and department review of research linking risk factors to school performance, including:~~

~~(a) For children eligible by income or qualification for special education, prioritization of children from families with the lowest incomes, children in foster care, and families with multiple needs;~~

~~(b) For over-income children eligible under subsection (1)(c) of this section, prioritization of children experiencing homelessness or impacted by specific developmental or environmental risk factors that are linked by research to school performance;~~

~~(e) For allowable children from over income families who are not eligible nor proposed to be entitled to ECEAP in 2022-2023, prioritization of children experiencing homelessness, involved in the child welfare system, or with a developmental delay or disability that does not meet the eligibility criteria for special education provided for in RCW 28A.155-020;~~

~~(d) Child age, with priority for children who are within one year of kindergarten age; and~~

~~(e) State law requiring ECEAP priority for children in foster care, in the child welfare system, homeless, in families with the lowest income, or in families with multiple risk factors.~~

[Statutory Authority: RCW 43.216.065, 43.216.512, and 43.216.525. WSR 19-03-041, § 110-425-0080, filed 1/8/19, effective 2/8/19. WSR 18-14-078, recodified as § 110-425-0080, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 14-14-055, § 170-100-080, filed 6/26/14, effective 7/27/14. Statutory Authority: RCW 43.215.020, 43.215.070, and 2010 c 231. WSR 10-20-059, § 170-100-080, filed 9/27/10, effective 10/28/10. WSR 06-18-085, recodified as § 170-100-080, filed 9/5/06, effective 9/5/06. Statutory Authority: Chapter 28A.215 RCW. WSR 06-13-046, § 365-170-080, filed 6/16/06, effective 7/17/06. Statutory Authority: RCW 43.63A.060. WSR 99-19-176, § 365-170-080, filed 9/22/99, effective 10/23/99. Statutory Authority: RCW 28A.34A.060. WSR 88-18-039 (Order 88-04), § 365-170-080, filed 8/31/88. Statutory Authority: RCW 43.63A.060. WSR 87-04-007 (Order 87-02), § 365-170-080, filed 1/23/87.]

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

NEW SECTION

WAC 110-425-0083 Additional children allowed for enrollment. (1) A child is allowed for enrollment in ECEAP as space is available if the child is at least three years old by August 31~~st~~ of the enrollment school year and is not age-eligible for kindergarten; and is either:

(a) From a family above one hundred ten percent but less than or equal to one hundred thirty percent of FPL; or

(b) From a family above one hundred thirty percent but less than or equal to two hundred percent of FPL and with one or more specific risk factors as described in the department's prioritization system under WAC 110-425-0085(4).

(2) A child is allowed for enrollment in ECEAP as space is available if the child:

(a) Has received services from the early support for infants and toddlers program (ESIT), early head start (EHS), or the birth to three early childhood education and assistance program;

(b) Turned three years of age any time after August 31 of the enrollment school year;

(c) Has a first class start date in ECEAP on or after their third birthday; and

(d) Is from a family with income:

(i) At or below two hundred percent of FPL; or

(ii) Above two hundred percent of FPL with one or more additional specific risk factors as described in the department's prioritization system under WAC 110-425-0085(4).

Reviser's note: The unnecessary strikethrough 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 110-425-0085 Prioritization system. (1) Once contractors have established a pool of children who are eligible or allowed for enrollment, contractors must prioritize the children for available funded ECEAP slots.

(2) The department establishes an ECEAP prioritization system based on priority points attributed to each child who is eligible or allowed for enrollment. This system is updated periodically as related research becomes available. The most current prioritization system is accessible on the department's website and is incorporated into the Early Learning Management System (ELMS) which manages ECEAP eligibility and enrollment.

(3) The ECEAP prioritization system incorporates the prioritization requirements included in RCW 43.216.505 (4), 43.216.512, and 43.216.514.

(4) Priority points are awarded for:

(a) Child welfare system involvement;

(b) Homelessness;

(c) Family income calculated as a percentage of the federal poverty level;

(d) Four year olds who are within one year of kindergarten eligibility;

(e) Limited English proficiency which shall have the same meaning as the phrase "English as a second language" under RCW 43.216.512.

(f) Individualized Education Program (IEP);

(g) Suspected or diagnosed developmental delay or disability for a child without an IEP;

(h) Incarcerated parent;

(i) Child's previous expulsion from an early learning setting due to behavior;

(j) Family domestic violence;

(k) Family substance abuse;

(l) Family mental illness;

(m) Other risk factors determined by the department to be linked by research to school performance.

NEW SECTION

WAC 110-425-0087 Contractor slots for children above one hundred ten percent of FPL. With regard to

children eligible for enrollment, RCW 43.216.505 (4)(c) establishes a limit of ten percent of total statewide enrollment for children that meet criteria established by WAC 110-425-0080 (1)(c).

(1) With regard to children allowed for enrollment, RCW 43.216.512 establishes a limit of twenty-five percent of total statewide enrollment.

(2) The department sets an initial limit for each contractor of slots for children above one hundred ten percent of FPL who do not have an IEP, in order to manage the statewide limits.

(a) This limit is based on each contractor's size, enrollment history, and to provide flexibility to fill classes in rural areas.

(b) For sites operated by tribes or tribal organizations, the department sets the initial limit at twenty-five percent.

(c) The department may adjust limits midyear if slots are reallocated between contractors.

(d) This contractor limit is managed in ELMS.

(3) Once a contractor has enrolled their limit of children above one hundred ten percent of FPL who do not have an IEP, the contractor may request an increase of their limit if:

(a) The contractor has enrolled all slots available for children above one hundred ten percent of FPL who do not have IEPs;

(b) The contractor has unfilled funded slots; and

(c) Efforts to recruit children eligible for enrollment or with higher priority points within the contractor's service area have been exhausted.

(5) The department will consider the following factors when reviewing requests for additional slots above one hundred ten percent of FPL:

(a) ECEAP enrollments have not reached the statewide limits of children eligible and allowed for enrollment above one hundred ten percent of FPL who do not have an IEP under RCW 43.216.505(4) and 43.216.512;

(b) The requesting contractor's need to fill slots to fully enroll a class to ensure access to services children at or below one hundred ten percent of FPL;

(c) The requesting contractor's community need for additional flexibility to serve additional children; and

(d) The presence of unserved children at or below one hundred ten percent of FPL in other locations in the state.

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

WSR 19-18-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-197—Filed August 21, 2019, 3:30 p.m., effective August 26, 2019]

Effective Date of Rule: August 26, 2019.

Purpose: Amends recreational Puget Sound salmon rules.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000I and 220-313-06000J; and amending WAC 220-313-060.

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

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

Reasons for this Finding: This rule is necessary to require the release of Chinook salmon in Catch Record Card (CRC) Area 11. The Chinook quota for CRC Area 11 is expected to be reached by the end of the day August 25, 2019. This rule also opens salmon fishing from a vessel seven days per week in CRC Area 11. These measures are consistent with comanager agreed to fisheries. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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: August 21, 2019.

Kelly Susewind
Director

NEW SECTION

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

1. Catch Record Card Area 8-1, effective immediately through October 31, 2019: Release all pink salmon.

2. Catch Record Card Area 10, effective immediately through November 15, 2019: Release all Chinook salmon.

3. Catch Record Card Area 11, effective August 26 through September 30, 2019:

(a) Release all Chinook salmon.

(b) It is lawful to fish for salmon from a vessel seven days per week.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 26, 2019:

- WAC 220-313-06000J Puget Sound salmon—Saltwater seasons and daily limits. (19-194)
- WAC 220-313-06000I Puget Sound salmon—Saltwater seasons and daily limits. (19-193)

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

WSR 19-18-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-198—Filed August 21, 2019, 3:46 p.m., effective August 21, 2019, 3:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial shrimp rules.

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

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

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

Reasons for this Finding: The 2019 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule: (1) Closes the pot fishery season for spot shrimp in some areas; (2) opens spot shrimp for the final clean-up fishery in some areas; (3) implements a minimum mesh size restriction for spot shrimp gear; (4) maintains the closure of a portion of Marine Fish Shellfish Management and Catch Reporting Area 20B within Shrimp Management Area 1B to harvest of shrimp with trawl gear; and (5) maintains other regulations and restrictions for the nonspot trawl and pot fisheries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 21, 2019.

Kelly Susewind
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas (SMA) 1B, 1C, 2E, 2W, 3, and 5 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

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

(ii) All waters of Shrimp Management Area 2E are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(iii) All waters of Shrimp Management Area 2W are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(iv) All waters Shrimp Management Area 3 are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(v) All waters of Shrimp Management Area 1B (20B, 22A East, 21A) and 1C (20A, 21A, 21B and 22B) are closed to the harvest of all shrimp.

(vi) Effective August 22, 2019 at 12:01 am until 11:59 pm on September 7, 2019, all waters of Shrimp Management Areas 1B (20B, 22A East, 21A) are open to harvest of spot shrimp. There are 323 pounds of quota remaining in SMA 1B.

(vii) Effective August 22, 2019 at 12:01 am until 11:59 pm on September 7, 2019, all waters of Shrimp Management Area 1C (20A, 21A, 21B and 22B) are open to harvest of spot shrimp. There are 983 pounds of quota remaining in SMA 1C.

(viii) Effective August 22, 2019 at 12:01 am until 11:59 pm on September 7, 2019, all waters of Catch Area 23A West in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 1055 pounds of quota remaining in Catch Area 23A West.

(ix) Effective August 22, 2019 at 12:01 am until 11:59 pm on September 7, 2019, all waters of Catch Area 23A Central in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 118 pounds of quota remaining in area Catch Area 23A Central.

(x) Effective August 22, 2019 at 12:01 am until 11:59 pm on September 15, 2019, all waters of Catch Area 23A South and 23D in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 5915 pounds of quota remaining in Area Catch Area 23A South/23D West.

(xi) Effective August 22, 2019 at 12:01 am until 11:59 pm on September 15, 2019, all waters of Catch Area 23C in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 1200 pounds of quota remaining in Catch Area 23C.

(xii) Effective August 22, 2019 at 12:01 am until 11:59 pm on September 7, 2019, all waters of Catch Area 25A outside District 1 in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 719 pounds of quota remaining in Catch Area 25A outside District 1.

(xiii) Effective August 22, 2019 at 12:01 am until September 15, 2019, all waters of Catch Area 29 in Shrimp Management Area 3 are open open to harvest of spot shrimp. There are 500 pounds of quota remaining in Catch Area 29.

(xiv) Effective August 22, 2019 at 12:01 am until August 31, 2019, all waters of Shrimp Management Area 5 are open to harvest of spot shrimp. There are 3449 pounds of quota remaining in SMA 5.

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

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

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

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

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice.

Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 21A within SMA 1B is open.

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

(d) That portion of Catch Area 20B within SMA 1B is closed.

(e) Catch Area 20A is open.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000G Puget Sound shrimp pot and beam trawl fishery—Season. (19-192)

WSR 19-18-005 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-199—Filed August 22, 2019, 4:45 p.m., effective August 24, 2019]

Effective Date of Rule: August 24, 2019.

Purpose: Amend recreational salmon and steelhead rules for the Snake River.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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

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

Reasons for this Finding: This rule is needed to open salmon fishing in portions of the Snake River. The 2019 Columbia River forecasted return of upriver bright adults is 158,400, with a significant portion of these fish expected to return to the Snake River. Forecasts indicate sufficient returns of adult hatchery fall Chinook and jack Chinook exist to allow for this fishery. There is insufficient time to adopt permanent rules.

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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: August 22, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000M Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050: Snake River; effective August 24 through October 31, 2019:

(a) **From the mouth (Burbank to Pasco Railroad Bridge at Snake River mile 1.25) to Lower Granite dam:**

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Salmon: Daily limit 6 hatchery adult Chinook, no daily limit for any jack Chinook. Release all other salmon.

(b) **From the downstream edge of the large power lines crossing the Snake River (just upstream from West Evans Road on the south shore) upstream to the ID/OR border.**

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Salmon: Daily limit 6 hatchery adult Chinook, no daily limit for any jack Chinook. Release all other salmon.

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

**WSR 19-18-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-196—Filed August 23, 2019, 4:02 p.m., effective August 25, 2019, 5:00 a.m.]

Effective Date of Rule: August 25, 2019, 5:00 a.m.

Purpose: Amend commercial purse seine and gill net rules for Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000M, 220-354-16000S and 220-354-18000I; and amending WAC 220-354-120, 220-354-160, and 220-354-180.

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 provide for Pacific Salmon Commission authorized commercial fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A. 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 3, Amended 0, Repealed 3.

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

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

Date Adopted: August 23, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000M Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed below:

Areas	Open Periods
7 and 7A, excluding the Apex	Open 5 a.m. - 9 p.m. August 24, 2019 Open 5 a.m. - 9 p.m. August 25, 2019

(a) It is lawful to retain pink salmon. Release all other fish.

(b) Purse seine are required to brail and fishers must also use a recovery box in compliance with WAC 220-354-100 (7)(a) through (f).

(c) All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(e) The Apex is those waters north and west of the Area 7A "East Point Line," defined as a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the state of

Washington to the East Point light on Saturna Island in the Province of British Columbia.

NEW SECTION

WAC 220-354-16000S Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Areas	Open Periods
7 and 7A, excluding the Apex	Open 8 a.m. - 11:59 p.m. August 24, 2019 Open 8 a.m. - 11:59 p.m. August 25, 2019

- (a) It is unlawful to retain sockeye salmon and rockfish.
- (b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(c) The Apex is those waters north and west of the Area 7A "East Point Line," defined as a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the state of Washington to the East Point light on Saturna Island in the Province of British Columbia.

NEW SECTION

WAC 220-354-18000I Puget Sound salmon—Reef net open periods. Notwithstanding the provisions of WAC 220-354-180, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Reef nets** - Open to reef nets according to the times, dates, and conditions as prescribed and listed below:

Area	Open Periods
7	Open 5 a.m. - 9 p.m. August 25, 2019 Open 5 a.m. - 9 p.m. August 26, 2019

- (a) Release all sockeye, unmarked Chinook, unmarked coho and chum.
- (b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. August 25, 2019:

WAC 220-354-12000M Puget Sound salmon—Purse seines—Open periods.

The following section of the Washington Administrative Code is repealed effective August 26, 2019:

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

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. August 26, 2019:

WAC 220-354-18000I Puget Sound salmon—Reef nets—Open periods.

**WSR 19-18-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-201—Filed August 26, 2019, 2:28 p.m., effective August 26, 2019, 2:28 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial sea cucumber rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000M; and amending WAC 220-340-730.

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 necessary to close the Puget Sound commercial sea cucumber fishery in Sea Cucumber Management District 5 (28A, 28B, 28C, 28D). The harvest quota has been reached, and this closure is necessary to prevent overharvest. Harvestable surpluses of sea cucumbers remain in districts specified to remain open. 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: August 26, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000N Commercial sea cucumber fishery. Notwithstanding the provisions of WAC 220-340-730, effective immediately, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish-Shellfish Catch Reporting Areas of Sea Cucumber District 1, Monday through Sunday of each week: 20A, 20B, 21A, 21B, 22A, and 22B.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish-Shellfish Catch Reporting Areas of Sea Cucumber District 2, Monday through Sunday of each week: 29, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-340-73000M Commercial sea cucumber fishery.
(19-189)

WSR 19-18-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-200—Filed August 28, 2019, 9:00 a.m., effective September 1, 2019]

Effective Date of Rule: September 1, 2019.

Purpose: Amend recreational steelhead fishing rules for the Grande Ronde, Snake, Touchet, Tucannon, and Walla Walla [Walla] rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000M; 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 necessary [to] reduce the steelhead daily limit for the Grande Ronde, Snake, Touchet, Tucannon, and Walla Walla rivers. The 2019 Columbia River forecasted return for upriver steelhead was one hundred eighteen thousand two hundred. With continued concerns between comanagers for A run steelhead and impacts to wild fish we feel it is important to reduce limits to protect steelhead within the Snake River and its tributaries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 27, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000N Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective September 1, 2019 until further notice:

(1) **Grande Ronde River (Asotin County): from the mouth to the Washington/Oregon boundary:** 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 Wall Counties):**
(a) **from the mouth (Burbank-to-Pasco railroad bridge at river mile 1.25) to Lower Granite Dam:**

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead:

(A) Daily limit 1 hatchery steelhead.

(B) Release all steelhead 28 inches or greater in length.

(C) Anglers must stop fishing for steelhead once their daily limit has been retained.

(iv) Salmon, effective immediately through October 31: Daily limit 6 hatchery adult Chinook, no daily limit for any jack Chinook. Release all other salmon.

(b) from Lower Granite Dam to the downstream edge of the large power lines crossing the Snake River (just upstream from West Evans Road on the south shore):

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead:

(A) Daily limit 1 hatchery steelhead.

(B) Release all steelhead 28 inches or greater in length.

(C) Anglers must stop fishing for steelhead once their daily limit has been retained.

(c) from the downstream edge of the large power lines crossing the Snake River (just upstream from West Evans Road on the south shore) upstream to Couse Creek Boat Ramp:

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead:

(A) Daily limit 1 hatchery steelhead.

(B) Release all steelhead 28 inches or greater in length.

(C) Anglers must stop fishing for steelhead once their daily limit has been retained.

(iv) Salmon, effective immediately through October 31: Daily limit 6 hatchery adult Chinook, no daily limit for any jack Chinook. Release all other salmon.

(d) from Couse Creek Boat Ramp to ID/OR border:

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead:

(A) Daily limit 1 hatchery steelhead.

(B) Anglers must stop fishing for steelhead once their daily limit has been retained.

(iv) Salmon, effective immediately through October 31: Daily limit 6 hatchery adult Chinook, no daily limit for any jack Chinook. Release all other salmon.

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

(4) Tucannon River (Columbia/Garfield Counties): from mouth to the Tucannon Hatchery Road Bridge: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead once their daily limit has been retained.

(5) Walla Walla River (Walla Walla County): from mouth to the Washington/Oregon border: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead once their daily limit has been retained.

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

REPEALER

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

WAC 220-312-05000M Freshwater exceptions to state-wide rules—Eastside. (19-199)

**WSR 19-18-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-201—Filed August 28, 2019, 3:00 p.m., effective August 28, 2019, 3:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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

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

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

Reasons for this Finding: The buffered preseason upriver bright limit planned for the mainstem commercial fishery has nearly been reached and therefore there is not enough room for the last scheduled fishery opening. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with the compact action of July 30, August 12, and August 28, 2019. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2018-2027 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: August 28, 2019.

James B. Scott, Jr.
for Kelly Suswind
Director

NEW SECTION

WAC 220-358-03000F Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River

Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point/South Channel

(a) **Dates:** Monday and Wednesday nights August 26-29, 2019.

Monday, Tuesday, Wednesday, and Thursday nights September 2 - October 25

Open Hours: 7 PM - 7 AM through September 6 and 4 PM - 10 AM thereafter

(b) **Area:** The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island north-easterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island.

(i) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(ii) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(c) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms.

In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(d) **Allowable Sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

(e) **Miscellaneous:** Permanent transportation rules in effect.

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday and Wednesday nights August 26-29, 2019

Monday, Tuesday, Wednesday, and Thursday nights September 2 - October 25

Open hours: 7 PM - 7 AM through September 6 and 6 PM - 10 AM thereafter.

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

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

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(c) **Gear:** Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(d) **Allowable sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

(e) **Miscellaneous:** Permanent transportation rules in effect.

(3) Deep River Select Area

(a) **Dates:** Monday and Wednesday nights during August 26-29, 2019.

Monday, Tuesday, Wednesday, Thursday, and Friday nights September 2-21

Monday, Tuesday, Wednesday, and Thursday nights September 23-27

Monday and Wednesday nights during September 30-October 3

Monday, Tuesday, Wednesday, and Thursday nights October 7-18

Monday, Tuesday, Wednesday, Thursday, and Friday nights Oct. 21-Nov. 16

Monday, Tuesday, Wednesday, and Thursday nights November 18-further notice.

Open hours: 7 PM - 7 AM August 26-29, 6 PM - 9 AM September 2 to November 2, and 5 PM - 8 AM thereafter

(b) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4-inch through September 7, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream, or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level.

(d) **Allowable sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

(e) **Miscellaneous:** Permanent transportation rules in effect.

(4) The white sturgeon possession and sales limit includes all open Select Area fisheries.

(5) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)) in Select Area Fisheries.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000E Columbia River seasons below Bonneville. (19-190)

WSR 19-18-037**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 19-202—Filed August 29, 2019, 11:34 a.m., effective September 1, 2019]

Effective Date of Rule: September 1, 2019.

Purpose: Amend recreational steelhead and salmon rules for the Columbia, Klickitat, Lewis, White Salmon, and Wind rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000Y and 220-312-06000T; and amending WAC 220-312-030 and 220-312-060.

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

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

Reasons for this Finding: The Columbia River upriver steelhead run-size was recently downgraded. Some Washington hatcheries are projecting broodstock collection shortfalls. Closing retention of hatchery steelhead in the listed tributary

reaches and lower mainstem Columbia will help to provide additional fish for hatchery broodstock and provide future fishing opportunity. This action is consistent with Columbia River Compact action taken August 28, 2019.

This rule also reopens Chinook retention on the Lewis River from Johnson Creek to the overhead power lines below Merwin Dam by reverting to permanent rules as listed in the regulation pamphlet. This rule provides anglers opportunity for fall Chinook as hatchery collection of spring Chinook will be completed by September 1.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 28, 2019.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000A Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective September 1, 2019:

(1) Klickitat River (Klickitat Co.): From the mouth to Fisher Hill Bridge: Effective immediately through September 30, 2019: Release all steelhead.

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

- (a) Daily limit 6; up to 4 may be adults.
- (b) Release all salmon other than hatchery coho.

(3) White Salmon River (Klickitat/Skamania Co.): From the mouth (Burlington Northern Railroad Bridge) to the county road bridge below the former location of the powerhouse: Effective immediately through September 30, 2019: Release all steelhead.

(4) Wind River (Skamania Co.): From the mouth to 400 feet downstream of Shipherd Falls fish ladder: Effective immediately through September 30, 2019: Release all steelhead.

NEW SECTION

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia Notwithstanding the provisions of WAC 220-312-060, effective September 1, 2019:

(1) From Buoy 10 upstream to The Dalles Dam; salmon and steelhead; effective immediately through September 30, 2019: Release all steelhead.

(2) From the upstream line of Rocky Reach Dam to the boundary markers 400' below the spawning channel discharges (on Chelan County side) and the fish ladder (on Douglas County side) at Wells Dam; salmon; effective immediately through October 15, 2019:

- (a) Daily limit 6.
- (b) No more than 2 adult Chinook may be retained.
- (c) Release wild adult Chinook, sockeye, and coho.
- (d) Anglers who possess a valid two-pole endorsement may fish for salmon with two lines.

(3) From the Highway 173 Bridge at Brewster upstream to the Highway 17 Bridge near Bridgeport; salmon; effective immediately until further notice:

- (a) Daily limit 6.
- (b) No more than 2 adult Chinook may be retained.
- (c) Release wild adult Chinook, sockeye, and coho.
- (d) Anglers who possess a valid two-pole endorsement may fish for salmon with two lines.

REPEALER

The following sections of the Washington Administrative Code are repealed effective September 1, 2019:

WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia (19-170)

WAC 220-312-03000Y Southwest—Freshwater exceptions to statewide rules. (19-168)

WSR 19-18-039

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-204—Filed August 29, 2019, 2:12 p.m., effective September 1, 2019]

Effective Date of Rule: September 1, 2019.

Purpose: Amend Snohomish River recreational salmon fishing rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000X; 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 rule is needed to open pink salmon retention on the Snohomish River. The Snohomish

ish River was originally closed for pink salmon retention under a state and tribal comanager agreement to protect pink salmon. Early information indicates that the return of pinks to the Snohomish River is large enough to support a small recreational fishery in the river. 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: August 29, 2019.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000X Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective September 1 through September 3, 2019:

Snohomish River (Snohomish County), from the mouth (Burlington-Norther Railroad bridges) (including all channels, sloughs, and interconnected waterways, but excluding all tributaries) upstream to confluence of the Skykomish and Snoqualmie Rivers: Salmon: Daily limit 1; release all salmon other than coho and pink salmon.

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 sections of the Washington Administrative Code is repealed effective September 4, 2019:

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

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

**WSR 19-18-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-203—Filed August 29, 2019, 2:14 p.m., effective September 2, 2019]

Effective Date of Rule: September 2, 2019.

Purpose: Closes the commercial harvest of sea cucumbers in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000M; and amending WAC 220-340-730.

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 necessary to close the Puget Sound commercial sea cucumber fishery in Sea Cucumber Management District 2-1 (23A, 23C, 23D, 29). The harvest quota is expected to be reached, and this closure is necessary to prevent overharvest. Harvestable surpluses of sea cucumbers remain in districts specified to remain open. 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: August 29, 2019.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000N Commercial sea cucumber fishery. Notwithstanding the provisions of WAC 220-340-730, effective September 2, 2019, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish-Shellfish Catch Reporting Areas of Sea Cucumber District 1, Monday through Sunday of each week: 20A, 20B, 21A, 21B, 22A, and 22B.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 2, 2019:

WAC 220-340-73000M Commerical sea cucumber fishery.
(19-189)

WSR 19-18-048

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 30, 2019, 8:38 a.m., effective September 1, 2019]

Effective Date of Rule: September 1, 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.

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: August 27, 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	
Specialized psychiatric services	
Speech, hearing, and language services	
Staff and family consultation and training	

SERVICE	YEARLY LIMIT
Supported parenting services ((Therapeutic equipment and supplies)) Transportation Vehicle modifications Wellness education	Limits determined by DDA. Costs are excluded from the annual allocation.
Risk assessment	
BEHAVIORAL HEALTH STABILIZATION SERVICES: Crisis diversion bed services Positive behavior support and consultation Specialized psychiatric services	Limits determined by behavioral health professional or DDA. Costs are excluded from the annual allocation.

(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 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 necessary dwelling to prevent or repair property destruction caused by the participant's behavior, as addressed in the participant's positive behavior support plan.

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 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 adaptation:

(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 residential (~~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 experi-

ence ~~((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.

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.

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 medic-aid 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; ~~((ø))~~
- (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 sup-

plies 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 19-18-052

EMERGENCY RULES DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed August 30, 2019, 11:20 a.m., effective September 1, 2019]

Effective Date of Rule: September 1, 2019.

Purpose: Comply with the agreement between the department and family home child care's representative to establish a school-age 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 110-15-0190, 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: Chapter 415, Laws of 2019, provides funding for working connections and seasonal child care partial-day rates, effective July 1, 2019, in accord with the interest arbitration award agreed to by the governor and the family home child care's representative. To implement the partial-day rates, the department and the family home child care's representative negotiated a school-age monthly rate to take effect September 1, 2019, which coincides with the beginning of the school year. There is insufficient time to complete the permanent rule-making process before September 1, 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 3, 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: August 30, 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 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 licensee 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, 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 selfemployment activities that occur outside of the home. Incorporated businesses are not considered selfemployment 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 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.

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

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.

[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 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 days units per month will be authorized when the child ~~((needs))~~ is in care five or more hours per day;

(b) Thirty half-day units per month will be authorized when the child ~~((needs))~~ is in 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))~~ is in five or more hours of care;

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

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

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

(iii) Only one monthly unit may be authorized per child per month.

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

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

(4) 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))~~ is in care five or more hours per day;

(b) One hundred fifteen hours of care will be authorized when the child ~~((needs))~~ is in 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))~~ is in 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) 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.

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

(8) ~~((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) 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 bracketed material preceding the section above was supplied by the code reviser's office.

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.

[**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)
<u>Region 1</u>	Full-Day	\$31.25	\$31.25	\$26.79	\$25.89	\$22.32
	Half-Day	\$15.63	\$15.63	\$13.39	\$12.95	\$11.16
<u>Spokane County</u>	Full-Day	\$32.59	\$32.59	\$27.68	\$26.79	\$26.79
	Half-Day	\$16.29	\$16.29	\$13.84	\$13.39	\$13.39
<u>Region 2</u>	Full-Day	\$32.14	\$32.14	\$29.46	\$26.79	\$25.00
	Half-Day	\$16.07	\$16.07	\$14.73	\$13.39	\$12.50
<u>Region 3</u>	Full-Day	\$42.86	\$42.86	\$37.50	\$36.25	\$29.38
	Half-Day	\$21.43	\$21.43	\$18.75	\$18.13	\$14.69
<u>Region 4</u>	Full-Day	\$54.37	\$54.37	\$48.70	\$41.07	\$32.31
	Half-Day	\$27.19	\$27.19	\$24.35	\$20.54	\$16.16
<u>Region 5</u>	Full-Day	\$37.07	\$37.07	\$34.90	\$31.25	\$26.79
	Half-Day	\$18.54	\$18.54	\$17.45	\$15.63	\$13.39
<u>Region 6</u>	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)
<u>Region 1</u>	Full-Day	\$33.13	\$33.13	\$28.39	\$27.45	\$23.66
	Half-Day	\$16.56	\$16.56	\$14.20	\$13.72	\$11.83
<u>Spokane County</u>	Full-Day	\$34.54	\$34.54	\$29.34	\$28.39	\$28.39
	Half-Day	\$17.27	\$17.27	\$14.67	\$14.20	\$14.20
<u>Region 2</u>	Full-Day	\$34.07	\$34.07	\$31.23	\$28.39	\$26.50
	Half-Day	\$17.04	\$17.04	\$15.62	\$14.20	\$13.25
<u>Region 3</u>	Full-Day	\$45.43	\$45.43	\$39.75	\$38.43	\$31.14
	Half-Day	\$22.71	\$22.71	\$19.88	\$19.21	\$15.57
<u>Region 4</u>	Full-Day	\$57.63	\$57.63	\$51.62	\$43.54	\$34.25
	Half-Day	\$28.82	\$28.82	\$25.81	\$21.77	\$17.13
<u>Region 5</u>	Full-Day	\$39.29	\$39.29	\$37.00	\$33.13	\$28.39
	Half-Day	\$19.65	\$19.65	\$18.50	\$16.56	\$14.20
<u>Region 6</u>	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))~~ ends before 12:00 p.m. An afternoon session ~~((shall begin))~~ begins at any time after 12:00 p.m. and ~~((end))~~ ends before 12:00 a.m.;

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

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

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

(3)(a) ~~The family home child care WAC 110-300B-0010 and 110-300B-5550 allow providers to care for children from birth up to and including the end of their eligibility period after their thirteenth birthday. WAC 110-B-0010 and 110-5550 are superseded by WAC 110-300-0005 and 110-0355, respectively, after August 1, 2019. Effective September 1, 2019, a single partial-day monthly rate as listed in the table below is authorized for school-age children who:~~

- (i) Are eligible for a fulltime authorization;
- (ii) Are authorized for care with only one provider; and
- (iii) Do not need care for more than five hours during a typical school day.

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

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

(4) ~~((The family home child care WAC 110-300B-0010 and 110-300B-5550 allow))~~ WAC 110-300-0355 allows providers to care for children from birth up to and including the end of their eligibility period after their thirteenth birthday. ~~((WAC 110-B-0010 and 110-5550 are superseded by WAC 110-300-0005 and 110-0355, respectively, after 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))~~ WACs 110-300-0300 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 bracketed material preceding the section above was supplied by the code reviser's office.

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

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.

[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))~~ WACs 170-15-0200 and 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 a 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 decreased as stated in ~~((WAC 170-290-0025))~~ WAC 110-15-0025. 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) The family home provider provides child care services for the child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and ends before 12:00 a.m.;

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

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

(d) In no event will a child care provider be entitled to two partial day rates totaling one hundred fifty percent of the daily rate.

(3)(a) Effective September 1, 2019, a single partial-day monthly rate is authorized for school-age children who:

(i) Are eligible for a full-time authorization;

(ii) Are authorized for care with only one provider; and

(ii) Do not need care for more than five hours during a typical school day.

(b) The monthly unit will be prorated for a partial month's authorization.

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

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

~~((4))~~ (5) The field trip/quality enhancement fees in ~~((WAC 170-290-0247))~~ WAC 110-15-0247;

~~((5))~~ (6) The nonstandard hours bonus in ~~((WAC 170-290-0249))~~ WAC 110-15-0249; and

~~((6))~~ (7) 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))~~ WACs 110-15-0220, 110-15-0225, and 110-15-0230.

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

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.

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

WSR 19-18-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-205—Filed August 30, 2019, 3:34 p.m., effective August 31, 2019]

Effective Date of Rule: August 31, 2019.

Purpose: Amend recreation salmon fishing rules for the Puyallup River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000Y; 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 rule is needed to allow retention of two additional pink salmon in the lower Puyallup River. One hundred seventy thousand pink salmon have passed above the Buckley trap, exceeding the preseason forecast and the escapement goal for the Puyallup. The higher than expected return supports additional harvest opportunity for recreational anglers. 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: August 30, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Y Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective August 31 through October 31:

Puyallup River (Pierce County), from the 11th St. Bridge to the East Main Bridge: Salmon: Daily limit 6; up to 2 adults plus 2 additional pink salmon may be retained. Release chum and wild Chinook.

REPEALER

The following sections of the Washington Administrative Code is repealed effective November 1, 2019:

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

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

WSR 19-18-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-206—Filed August 30, 2019, 4:24 p.m., effective August 31, 2019]

Effective Date of Rule: August 31, 2019.

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

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000M and 220-312-05000N; 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 necessary to allow retention of up to one wild adult Chinook in a portion of the Snake River. The states of Washington, Oregon and Idaho have been working on a new joint federal permit that will allow the retention of adipose-intact fall Chinook salmon in the Snake River. On August 30, NOAA Fisheries approved the permit, allowing the Washington department of fish and wildlife to implement this rule. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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: August 30, 2019.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000P Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050:

(1) **Grande Ronde River (Asotin County): from the mouth to the Washington/Oregon boundary:** Effective September 1, 2019 until further notice: 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 Wall Counties):**

(a) **from the mouth (Burbank-to-Pasco railroad bridge at river mile 1.25) to Lower Granite Dam:**

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead, effective September 1, 2019 until further notice:

(A) Daily limit 1 hatchery steelhead.

(B) Release all steelhead 28 inches or greater in length.

(C) Anglers must stop fishing for steelhead once their daily limit has been retained.

(iv) Salmon, effective immediately through October 31: Daily limit 6 hatchery adult Chinook, no daily limit for any jack Chinook. Release all other salmon.

(b) **from Lower Granite Dam to the downstream edge of the large power lines crossing the Snake River (just upstream from West Evans Road on the south shore):**

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead, effective September 1, 2019 until further notice:

(A) Daily limit 1 hatchery steelhead.

(B) Release all steelhead 28 inches or greater in length.

(C) Anglers must stop fishing for steelhead once their daily limit has been retained.

(c) **from the downstream edge of the large power lines crossing the Snake River (just upstream from West Evans Road on the south shore) upstream to Couse Creek Boat Ramp:**

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead, effective September 1, 2019 until further notice:

(A) Daily limit 1 hatchery steelhead.

(B) Release all steelhead 28 inches or greater in length.

(C) Anglers must stop fishing for steelhead once their daily limit has been retained.

(iv) Salmon, effective August 31 through October 31, 2019: Daily limit 6 adult Chinook of which up to 1 may be wild; no daily limit for any jack Chinook. Release all other salmon.

(d) **from Couse Creek Boat Ramp to ID/OR border:**

(i) Hooks must be barbless when fishing for salmon or steelhead.

(ii) Anglers may not continue to fish for salmon or steelhead after the adult salmon daily limit or steelhead daily limit has been retained.

(iii) Steelhead, effective September 1, 2019 until further notice:

(A) Daily limit 1 hatchery steelhead.

(B) Anglers must stop fishing for steelhead once their daily limit has been retained.

(iv) Salmon, effective August 31 through October 31, 2019: Daily limit 6 adult Chinook, of which up to 1 may be wild, no daily limit for any jack Chinook. Release all other salmon.

(3) **Touchet River (Walla Walla County): from mouth to the confluence of North and South Forks:** Effective September 1, 2019 until further notice: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead once their daily limit has been retained.

(4) **Tucannon River (Columbia/Garfield Counties): from mouth to the Tucannon Hatchery Road Bridge:** Effective September 1, 2019 until further notice: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead once their daily limit has been retained.

(5) **Walla Walla River (Walla Walla County): from mouth to the Washington/Oregon border:** Effective September 1, 2019 until further notice: Steelhead daily limit is 1 hatchery steelhead, anglers must stop fishing for steelhead once their daily limit has been retained.

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

REPEALER

The following sections of the Washington Administrative Code is repealed effective August 31, 2019:

WAC 220-312-05000M Freshwater exceptions to statewide rules—Eastside. (19-199)

The following sections of the Washington Administrative Code is repealed effective September 1, 2019:

WAC 220-312-05000N Freshwater exceptions to statewide rules—Eastside. (19-200)

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

WSR 19-18-073 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-207—Filed September 3, 2019, 2:06 p.m., effective September 3, 2019, 2:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes the commercial harvest of sea cucumbers in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000N; and amending WAC 220-340-730.

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 necessary to close the Puget Sound commercial sea cucumber fishery in Sea Cucumber Management District 2-1 (23A, 23C, 23D, 29). The harvest quota is expected to be reached, and this closure is necessary to prevent overharvest. Harvestable surpluses of sea cucumbers remain in districts specified to remain open. 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: September 3, 2019.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000P Commercial sea cucumber fishery. Notwithstanding the provisions of WAC 220-340-730, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish-Shellfish Catch Reporting Areas of Sea Cucumber District 1, Monday through Sunday of each week: 20A, 20B, 21A, 21B, 22A, and 22B.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-73000N Commercial sea cucumber fishery.
(19-201) (19-203)

WSR 19-18-082
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-209—Filed September 3, 2019, 5:12 p.m., effective September 3, 2019, 5:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial shrimp rules for Puget Sound.

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

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

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

Reasons for this Finding: The 2019 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes the pot fishery season for spot shrimp in some areas; (2) opens spot shrimp for the final clean-up fishery in some areas; (3) opens reporting Areas 1B (20B, 22A East, 21A) and 1C (20A, 21A, 21B and 22B) to harvest of nonspot shrimp in the pot fishery; (4) implements a minimum mesh size restriction for spot shrimp gear; (5) maintains the closure of a portion of MF/SF Catch Reporting Area 20B within Shrimp Management Area 1B to harvest of shrimp with trawl gear; and (6) maintains other regulations and restrictions for the nonspot trawl and

pot fisheries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 3, 2019.

Kelly Susewind
Director

NEW SECTION

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

(1) Shrimp pot gear:

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

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

(ii) All waters of Shrimp Management Area 2E are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps. The total harvest of non-spot shrimp by a fisher or the fisher's alternate operator in Area 2E may not exceed 400 pounds *per weekly management period*.

(iii) All waters of Shrimp Management Area 2W are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(iv) All waters Shrimp Management Area 3 are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(v) All waters of Shrimp Management Area 1B (20B, 22A East, 21A) and 1C (20A, 21A, 21B and 22B) are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

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

(vii) All waters of Catch Area 23A Central in Shrimp Management Area 3 are closed to harvest of spot shrimp.

(viii) Effective immediately until 11:59 pm on September 15, 2019, all waters of Catch Area 23A South and 23D in Shrimp Management Area 3 are open to harvest of spot shrimp.

(ix) Effective immediately until 11:59 pm on September 15, 2019, all waters of Catch Area 23C in Shrimp Management Area 3 are open to harvest of spot shrimp.

(x) Effective immediately until 11:59 pm on September 7, 2019, all waters of Catch Area 25A outside District 1 in Shrimp Management Area 3 are open to harvest of spot shrimp.

(xi) Effective immediately until September 15, 2019, all waters of Catch Area 29 in Shrimp Management Area 3 are open to harvest of spot shrimp.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds *per weekly management period* from Shrimp Management Area 2W and 2E, 1B, and 1C.

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

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

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

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice.

(b) That portion of Catch Area 21A within SMA 1B is open.

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

(d) That portion of Catch Area 20B within SMA 1B is closed.

(e) Catch Area 20A is open.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000H Puget Sound shrimp pot and beam trawl fishery—Season. (19-198)

WSR 19-18-087 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-208—Filed September 4, 2019, 9:04 a.m., effective September 8, 2019]

Effective Date of Rule: September 8, 2019.

Purpose: Amends coastal commercial crab fishery rules.

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

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

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

Reasons for this Finding: This rule is needed to adjust the weekly landing limit for coastal commercial crab fisheries. The weekly landing limit is necessary to protect the coastal Dungeness crab resource by mitigating handling mortality from sorting soft shelled crab and is in conformity with the coastal Dungeness crab summer fishery management plan. There is insufficient time to promulgate permanent rules.

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

Number of Sections Adopted at 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: September 3, 2019.

Kelly Susewind
Director

[NEW SECTION]

WAC 220-340-42000U Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective September 8, 2019:

(1) Effective immediately until further notice, it is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery to:

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

(b) Deploy or operate more than a total of 200 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

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

(2) It is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 1,200 pounds taken during each of the following coastal crab accounting periods:

- September 8 - September 15, 2019

(3) Any crab taken prior to September 8, 2019, and not landed before 11:59 p.m. September 7, 2019, become part of the September 8 - September 15, 2019 accounting period catch.

(4) It is unlawful for any person taking crab under subsection (2) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective September 8, 2019:

WAC 220-340-42000T Commerical crab fishery—Unlawful acts. (19-116)