

WSR 20-01-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-302—Filed December 5, 2019, 3:59 p.m., effective December 5, 2019, 3:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational razor clam rules.

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

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 5, 2019.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. December 10, 2019 through 11:59 p.m. December 16, 2019, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. December 10, 2019 through 11:59 p.m. December 16, 2019, razor clam digging is permis-

sible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. December 11, 2019 through 11:59 p.m. December 11, 2019, and 12:01 p.m. December 13, 2019 through 11:59 p.m. December 13, 2019, and 12:01 p.m. December 15, 2019 through 11:59 p.m. December 15, 2019, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. December 10, 2019 through 11:59 p.m. December 10, 2019, and 12:01 p.m. December 12, 2019 through 11:59 p.m. December 12, 2019, and 12:01 p.m. December 14, 2019 through 11:59 p.m. December 14, 2019, and 12:01 p.m. December 16, 2019 through 11:59 p.m. December 16, 2019 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m., December 17, 2019:

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

WSR 20-01-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-303—Filed December 9, 2019, 3:32 p.m., effective December 9, 2019, 3:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500Y and 220-352-34000C; and amending WAC 220-340-455 and 220-352-340.

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 will open Region 2-East and allow commercial crab harvest in Region 2-East with a maximum of no more than twenty-five pots per license per buoy tag number. This rule also requires fishers to declare their participation in the Region 2-East opening and requires that fishers report pounds of Dungeness crab harvested from Region 2-East each day. It will continue the Puget Sound commercial crab harvest in Regions 2-West, 3-1, 3-2, and 3-3. Pot limits in 2-West, 3-1, 3-2, and 3-3 will remain at fifty pots per license. These provisions are in conformity with agreed management plans with applicable tribes. These man-

agement plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: December 9, 2019.

Kelly Susewind
Director

NEW SECTION

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

1) Effective 8:00 am December 10, 2019 until December 14, 2019 at 6:00 pm Crab Management Region 2-East is open to commercial crab harvest. Region 2-East includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

2) Effective 8:00 am December 10, 2019, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 25 pots per license per buoy tag number in Crab Management Region 2-East.

3) Effective immediately, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 2-West, Region 3-1, Region 3-2, or Region 3-3. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 26A West, 25B, 25D, 25A, 25E, 23D, 23C and 29.

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

5) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

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

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

NEW SECTION

WAC 220-352-34000C Puget Sound crab—Additional reporting requirements. Notwithstanding the provisions of WAC 220-352-340:

1) Non-treaty commercial fishers that intend to harvest in Crab Management Region 2-East must declare intent to fish by 5:00 pm on December 9, 2019 by leaving text message to (360) 302-6372, or sending an email to Crab.Report@dfw.wa.gov, detailing the following information:

(a) Vessel Name

(b) Name and permit number(s) of licensed owner

(c) Name of designated primary operator if different from licensed owner

2) Non-treaty commercial fishers operating in Crab Management Region 2 East must report pounds of Dungeness crab landed by 8:00 pm the day of harvest. The vessel owner or operator must leave a text message to (360) 302-6372, or send an email to Crab.Report@dfw.wa.gov, detailing the following information:

(a) Vessel Name and Vessel Registration Number

(b) Pounds of Dungeness crab landed

(c) Crab Management Area fished

3) It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following day. Reports must be made by fax to (435) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-45500Y Commercial crab fishery—Seasons and areas—Puget Sound. (19-279)

WAC 220-352-34000C Puget Sound crab—Additional reporting requirements. (19-236)

**WSR 20-01-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-01—Filed December 10, 2019, 2:24 p.m., effective December 10, 2019, 2:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-352-34000B and 220-352-34000C; and amending WAC 220-352-340.

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 corrects a clerical error in WSR 20-01-053; in that filing WAC 220-352-34000C was repealed when the intent was to repeal WAC 220-352-34000B. This rule corrects that filing and requires fishers to declare their participation in the Region 2-East opening and requires that fishers report pounds of Dungeness crab harvested from Region 2-East each day. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 10, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-352-34000D Puget Sound crab—Additional reporting requirements. Notwithstanding the provisions of WAC 220-352-340:

1) Non-treaty commercial fishers that intend to harvest in Crab Management Region 2-East must declare intent to fish by 5:00 pm on December 9, 2019 by leaving text message to (360) 302-6372, or sending an email to Crab.Report@dfw.wa.gov, detailing the following information:

- (a) Vessel Name
- (b) Name and permit number(s) of licensed owner
- (c) Name of designated primary operator if different from licensed owner

2) Non-treaty commercial fishers operating in Crab Management Region 2 East must report pounds of Dunge-

ness crab landed by 8:00 pm the day of harvest. The vessel owner or operator must leave a text message to (360) 302-6372, or send an email to Crab.Report@dfw.wa.gov, detailing the following information:

- (a) Vessel Name and Vessel Registration Number
- (b) Pounds of Dungeness crab landed
- (c) Crab Management Area fished

3) It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following day. Reports must be made by fax to (435) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-352-34000B Puget Sound crab—Additional reporting requirements. (19-236)

WAC 220-352-34000C Puget Sound crab—Additional reporting requirements. (19-303)

WSR 20-01-066

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-306—Filed December 10, 2019, 5:34 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: Amend Puget Sound recreational crab rules.

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

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

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

Reasons for this Finding: This emergency rule is needed to continue the recreational crab harvest in Marine Areas 8-1 and 8-2 (Crab Region 2E). Comanagers have agreed to increase the state and tribal harvest shares in this region and the recreational fishery can remain open through January 31, 2020. Comanagers have also agreed to waive the requirement

to record retained Dungeness crab on a valid catch record card. Instead, the average monthly recreational harvest for winter during the last three seasons will be used as the January recreational harvest estimate. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 10, 2019.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

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

Marine Area 8-1 and Marine Area 8-2 are open to fish for crab for personal use from January 1 through January 31, 2020.

NEW SECTION

WAC 220-310-02000A Catch record cards. Notwithstanding the provisions of WAC 220-310-020, effective January 1 through January 31, 2020 anglers will not be required to have a valid and appropriate Puget Sound Dungeness crab catch record card as described in WAC 220-310-010 to fish for or possess for personal use, Dungeness crab in Catch Record Card Areas 8-1 and 8-2. Accordingly, anglers will also not be required to record any retained Dungeness crab on a Catch Record Card from January 1 through January 31, 2020.

REPEALER

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

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

WAC 220-310-02000A Catch record cards.

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 20-01-069

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed December 11, 2019, 10:06 a.m., effective December 11, 2019, 10:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Updating rules in 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 (ECEAP).

Citation of Rules Affected by this Order: New WAC 110-425-0083, 110-425-0084, 110-425-0085 and 110-425-0087; and amending WAC 110-425-0030 and 110-425-080.

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 screening 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 the 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 4, Repealed 0.

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

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

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

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

Date Adopted: December 11, 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. ~~((+))~~ "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" has the same meaning as "child eligible 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.

~~((5))~~ "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.

"Performance standards" means the most current release of the ECEAP performance standards as incorporated into the ECEAP contract, which are accessible at <https://www.dcyf.wa.gov/services/early-learning-providers/eceap/contractors>.

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. ~~((+))~~ 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))~~ (1) From a family with income at or below one hundred ten percent of the federal poverty level (FPL);

(2) 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(;

~~(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))~~ (3) From a family with income that exceeds one hundred ten percent federal poverty level ((~~"over income" and is homeless or~~) and is impacted by specific risk factors ((identified by the department that are linked by research to school performance, provided that)) incorporated into the department's 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.~~

~~(c) 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 children maintain their eligibility 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) Children are not eligible for 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) 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;~~

~~(c) 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.)~~

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 31st 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 31st 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).

NEW SECTION

WAC 110-425-0084 Duration of enrollment and allowance of dual enrollments. (1) Enrolled children 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.

(2) Children 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.

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

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 at <https://www.dcyf.wa.gov/services/early-learning-providers/eceap/contractors/direct-service-staff/enrollment> 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. (1) 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).

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

(3) 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.

(4) 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 unfilled funded slots; and

(b) 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.

WSR 20-01-078

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-305—Filed December 11, 2019, 3:07 p.m., effective December 12, 2019]

Effective Date of Rule: December 12, 2019.

Purpose: Amends recreational fishing rules for the Hoko River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000Z; and amending WAC 220-312-020.

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

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

Reasons for this Finding: This rule is necessary to close all steelhead retention on the Hoko River. Preseason expectations of hatchery origin steelhead are low requiring the release of hatchery steelhead to meet hatchery broodstock goals. This rule change is made in conjunction with comanagers who have also closed their steelhead fishery on 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: December 11, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000Z Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020:

1) Hoko River from mouth to 100 feet downstream of the hatchery ladder, effective December 12 through March 15, 2020: Release all steelhead.

2) Hoko River from hatchery fish ladder to cement bridge on Lake Ozette Hwy. (upper Hoko Bridge), effective December 12 through March 15, 2020: Release all steelhead.

3) Hoko River from upper Hoko Bridge to Ellis Creek Bridge (river mile 18.5), effective December 12 through March 31, 2020: Release all steelhead.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 31, 2020:

WAC 220-312-02000Z Freshwater exceptions to statewide rules—Coast.

WSR 20-01-118
EMERGENCY RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[R 2019-14 BBPA—Filed December 16, 2019, 11:21 a.m., effective December 16, 2019, 11:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Clarify the annual notice requirement for self-funded group health plans that operate on a calendar year basis and elect to participate in the balance billing protection act for plan year 2020. R 2019-14 BBPA self-funded group election 2020.

Citation of Rules Affected by this Order: New WAC 284-43B-071.

Statutory Authority for Adoption: RCW 48.49.110, 48.02.060.

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: RCW 48.49.130 requires self-funded group health plans to file an annual notice with the commissioner of their election to participate in the balance billing protection provisions in RCW 48.49.020 through 48.49.040. The law is effective January 1, 2020. Without the commissioner prescribing a specific election process for the 2020 plan year, plans with plan years beginning on a date in January 2020 will be unable to participate in the balance billing protections until their 2021 plan year. Providers and facilities would continue to balance bill those plan beneficiaries who would otherwise be protected by their self-funded group's election to participate. In order to provide all self-funded plans with the same access to balance billing protection during the first year of Balance Billing Protection Act implementation, the commissioner is permitting the annual election to occur with a shortened notice period, and to permit a partial year election for 2020 only if the plan year begins between January 1 and February 1. Because there is less than thirty days before January 1, the normal notice and comment opportunity would be contrary to the public interest and result in delayed access to these protections for the duration of that comment period.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 16, 2019.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43B-071 Self-funded group health plan opt-in for plan years beginning between January and February 2020. (1) For self-funded group plans whose plan year begins January 1, 2020, the self-funded group may elect to participate in the provisions of RCW 48.49.020 through 48.49.040 by filing its annual notice of election to the commissioner, using the form available on the oic.wa.gov website, not later than December 27, 2019.

(2) A self-funded group whose plan year begins on or before February 1, 2020, may elect to participate in the protections of RCW 48.49.020 through 48.49.040, pursuant to RCW 48.49.130, by filing the annual notice of election with the commissioner, using the form available on the oic.wa.gov website, not later than January 25, 2020. The commissioner deems the annual filing requirement for such filed notices satisfied on a partial plan year basis for the 2020 plan year.

WSR 20-01-139
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed December 17, 2019, 11:17 a.m., effective December 17, 2019, 11:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to provide funding parameters to school districts that choose to be early adopters of the early screening of dyslexia (E2SSB 6162) starting in SY 2019-20.

Citation of Rules Affected by this Order: New WAC 392-162-120.

Statutory Authority for Adoption: RCW 28A.300.730.

Other Authority: RCW 28A.165.035.

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: Immediate adoption of this rule is necessary to provide direction and guidance to school districts before the start of the 2019-2020 school year regarding the allowable expenditure of learning assistance program funds for early screening of dyslexia. The rule is necessary to ensure that school districts maintain support for other academic initiatives for the betterment of all students in the district. Office of superintendent of public instruction intends to file a preproposal statement of inquiry to initiate rule making adopting this amendment as a permanent rule.

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

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

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

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

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

Date Adopted: December 16, 2019.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

NEW SECTION

WAC 392-162-120 Early implementation of K-2 literacy screening requirements—Use of funds. (1) Definitions. As used in this section the terms:

(a) "Literacy interventions" means services and activities under RCW 28A.165.035(1) and 28A.320.260(3) to support students in kindergarten through second grade who show indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia.

(b) "Literacy screening tool" means one of the literacy screening tools identified and approved by the dyslexia advisory council and the office of superintendent of public instruction in accordance with RCW 28A.300.700.

(2) **Early implementation.** A school district that chooses to implement the screening and intervention requirements under RCW 28A.320.260 prior to the beginning of the 2021-22 school year may use the district's learning assistance program base allocation under WAC 392-122-605 (2)(a) to fund:

(a) The purchase of a literacy screening tool as defined under this section; and

(b) Literacy interventions as defined under this section.

(3) **Reporting.** A school district that chooses to expend learning assistance program funds as permitted under this section must submit data according to specifications estab-

lished by the office of the superintendent of public instruction in accordance with RCW 28A.165.100.

WSR 20-01-156 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-309—Filed December 17, 2019, 4:07 p.m., effective December 19, 2019]

Effective Date of Rule: December 19, 2019.

Purpose: Amend recreational fishing rules for freshwater in Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is needed to close portions of the listed rivers to the retention of hatchery steelhead. Whitehorse Ponds, Wallace River, Reiter Ponds and Tokul Creek hatcheries do not currently have enough broodstock on hand to reach early winter steelhead egg take goals. These closures are necessary to ensure hatchery broodstock goals are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 17, 2019.

Kelly Susewind
Director

[NEW SECTION]

WAC 220-312-040001 Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective December 19, 2019, until further notice the following waters are closed to the retention of hatchery steelhead.

(1) Stillaguamish River, from the mouth upstream to confluence of the North Fork and South Fork Stillaguamish Rivers

(2) North Fork Stillaguamish River, from the mouth upstream to Swede Heaven Bridge.

(3) Snohomish River, from the mouth upstream to confluence of the Skykomish and Snoqualmie rivers.

(4) Skykomish River, from the mouth upstream to the confluence of the North Fork Skykomish and South Fork Skykomish rivers.

(5) Wallace River.

(6) Snoqualmie River, from the mouth upstream to Snoqualmie Falls.

(7) Tokul Creek.

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