

**WSR 10-08-014**  
**EMERGENCY RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**

[Filed March 26, 2010, 3:18 p.m., effective March 26, 2010, 3:18 p.m.]

Effective Date of Rule: Immediately.

Purpose: Passage of ESSB 6381 increases appropriation amounts for the rural arterial program by \$22,000,000. Amendments to WAC 136-161-070 RAP program cycle and 136-161-080 Limitations on allocations of RATA funds to counties are required for immediate expenditure in this biennium.

Citation of Existing Rules Affected by this Order: Amending WAC 136-161-070 and 136-161-080.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Passage of ESSB 6381 increases appropriation amounts for the rural arterial program by \$22,000,000. Amendments to WAC 136-161-070 RAP program cycle and 136-161-080 Limitations on allocations of RATA funds to counties are required for immediate expenditure in this biennium.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: March 26, 2010.

Jay P. Weber  
Executive Director

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-161-070 RAP program cycle—Selection and approval of projects for RATA funding.** (1) At its last regular meeting before the beginning of each biennium, the

county road administration board will select projects and allocate anticipated RATA funds to projects in each region. The preliminary priority arrays as developed in WAC 136-161-060 will be updated to exclude any county which is ineligible under chapter 136-150 WAC, and projects will be selected from these arrays. Selections will be made in each region in declining priority rank order, provided that:

(a) No county shall be allocated RATA funds in excess of its regional county limit as specified in WAC 136-161-080; and

(b) Any projects which were partially funded in the prior biennium shall, unless otherwise requested by the county, be fully funded before new projects are selected. Ties in total rating points will be broken by the county road administration board in favor of the county having the lesser total amount of previously allocated RATA funds.

(2) The statewide net amount of RATA funds available for allocation to projects in the funding period will be based on the most recent state fuel tax revenue forecast prepared quarterly by the department of transportation and may include changes in appropriations approved by the legislature, less estimated administrative costs, and less any amounts set aside for emergent projects as described in WAC 136-163-020. The total amount of RATA funds available for allocation to projects in a region (i.e., "forecasted regional apportionment amount") will be based on the regional apportionment percentages of the statewide net amount as determined in chapter 136-100 WAC.

(3) For the funding period beginning July 1, 1995, the project program period will be the next four state fiscal years (1996, 1997, 1998 and 1999, beginning July 1, 1995, and ending June 30, 1999). For the funding period beginning July 1, 1997, the project program period will begin July 1, 1999 and end June 30, 2001.

(4) The RATA amounts allocated to projects in the first year of the biennium are limited to no more than ninety percent of the net amount estimated to be allocable to each region for the project program period, with the remaining percentage allocated at such time as deemed appropriate by the county road administration board.

(5) Acceptance of the RATA allocation for a project by the full execution of a CRAB/county contract as described in chapter 136-170 WAC constitutes agreement to complete the project in compliance with the scope, design and project limits in the final prospectus. All material changes to the scope, design or project limits must be approved by the county road administration board prior to commencement of construction.

AMENDATORY SECTION (Amending WSR 10-05-018, filed 2/4/10, effective 3/7/10)

**WAC 136-161-080 Limitations on allocations of RATA funds to counties.** (~~For any project program period,~~) Commencing with the 2009-2011 biennium program period, the CRABoard may allocate additional RATA funding to projects based on changes in appropriations approved by the legislature. Commencing with the 2009-2011 biennium program period the following limitations apply: No county shall receive a RATA fund allocation greater than the following maximum project RATA contribu-

tion((, or percentage of the forecasted regional apportionment amount)):

(1) PSR: ~~((No maximum project RATA contribution;))~~ 40% limit on ~~((percentage of the forecasted regional apportionment amount))~~ both the regional apportionment of estimated fuel tax revenue and the regional apportionment of appropriations approved by the legislature;

(2) NWR: ~~((No maximum project RATA contribution; twenty percent))~~ 20% limit on ~~((percentage of the forecasted regional apportionment amount))~~ both the regional apportionment of estimated fuel tax revenue and the regional apportionment of appropriations approved by the legislature;

(3) NER: ~~((No maximum project RATA contribution;))~~ Maximum RATA contribution to each county for 2R projects is seven hundred fifty thousand dollars; ((twelve and one-half percent)) 12.5% limit on ((percentage of the forecasted regional apportionment amount)) both the regional apportionment of estimated fuel tax revenue and the regional apportionment of appropriations approved by the legislature;

(4) SWR: ~~((No maximum project RATA contribution; fifteen percent))~~ 15% limit on ~~((percentage of the forecasted regional apportionment amount))~~ both the regional apportionment of estimated fuel tax revenue and the regional apportionment of appropriations approved by the legislature;

(5) SER: ~~((No maximum project RATA contribution;))~~ Percentage varies by county as follows:

(a) Asotin County	ten percent
(b) Benton County	fourteen percent
(c) Columbia County	eleven percent
(d) Franklin County	thirteen percent
(e) Garfield County	ten percent
(f) Kittitas County	thirteen percent
(g) Klickitat County	fourteen percent
(h) Walla Walla County	fourteen percent
(i) Yakima County	twenty percent

**WSR 10-08-020**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed March 30, 2010, 8:38 a.m., effective March 30, 2010, 8:38 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing to amend via emergency adoption WAC 388-424-0020 in order to allow special immigrants from Iraq and Afghanistan to be eligible for federally funded Washington Basic Food program for up to sixty months as allowed under federal law. This change must be implemented immediately to comply with Public Law (P.L.) 111-118 the Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120, and a new federal guidance issued on January 29, 2010, by the Food and Nutrition Service, United States Department of Agriculture.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-424-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 74.08A.-120.

Other Authority: P.L. 111-118 the Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120, Food and Nutrition Service Administration SNAP Administrative Notice 10-15 from January 29, 2010, United States Department of Agriculture.

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

Reasons for this Finding: To extend the duration of eligibility of special immigrants from Iraq and Afghanistan for federally funded Basic Food benefits from eight to sixty months from the date of entry into the United States or date of adjustment to special immigrant status, as required by the Food and Nutrition Service Administration, United States Department of Agriculture SNAP Administrative Notice 10-15. This change went into effect December 19, 2009, and some individuals would receive limited assistance if the department made the change only via the regular rule-filing process. The department is concurrently working on the regular rule-filing process.

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

Number of Sections Adopted at Request of a Nongovernmental 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 1, Repealed 0.

Date Adopted: March 26, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-21-046, filed 10/14/09, effective 11/4/09)

**WAC 388-424-0020 How does my alien status impact my eligibility for the federally funded Washington Basic Food program benefits?** (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a), (b), or (c) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of "qualified aliens" or similarly defined lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;
- (iv) Deportation or removal withheld;
- (v) Refugee;
- (vi) Special immigrant from Iraq or Afghanistan;
- (vii) Victim of trafficking;
- ~~((viii))~~ (viii) Noncitizen American Indian; or
- ~~((viii))~~ (ix) Hmong or Highland Lao tribal member.

(b)(i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

- (A) Conditional entrant;
- (B) Lawful permanent resident (LPR);
- (C) Paroled for one year or more; or
- (D) Victim of domestic violence or parent or child of a victim.

(ii) And, one of the following also applies to you:

(A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007(1);

(C) You receive cash or medical benefits based on Supplemental Security Income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age eighteen; or

(F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

~~((e) You are a special immigrant from Iraq or Afghanistan eligible for eight months of federally funded assistance from the date of your entry into the United States or from the date you received special immigrant status if this occurred after your U.S. entry.))~~

(3) If you are ineligible for federal Basic Food benefits due to your alien status, you may be eligible for state Basic Food benefits (see WAC 388-424-0025).

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000X and 220-33-01000Y; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *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: Sets the first 2010 spring chinook fishing period. Season is consistent with compact action of March 29, 2010. The fishery is consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the associated biological opinion, and Washington fish and wildlife commission guidelines. Conforms Washington state rules with Oregon state rules. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, 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 2008-2017 *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, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively

### WSR 10-08-021

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 10-68—Filed March 30, 2010, 9:39 a.m., effective March 30, 2010, 12:00 p.m.]

Effective Date of Rule: March 30, 2010, 12:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia

by emergency rule. Representatives from the Washington and Oregon departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. Washington department of fish and wildlife and Oregon department of fish and wildlife then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental 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: March 30, 2010.

Lori Preuss  
for Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000Y Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, 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:

### **1. Mainstem Columbia River**

a) Area: SMCRA 1A, 1B, 1C, and 1D only upstream to the I-205 Bridge.

b) Dates: 12:00 p.m. to 12:00 a.m. March 30, 2010.

c) Allowable Sales: Adipose fin-clipped salmon, white sturgeon (43-54 inch fork length), and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin.

d) Sanctuaries: Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers as applicable.

e) Gear: Drift gill nets only, 4-1/4 inch maximum mesh. Monofilament gill nets are not allowed for the 4-1/4 inch mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

Net length not to exceed 150 fathoms, except under the following conditions: Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers may extend to a maximum length of 175 fathoms.

An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel must be a minimum of 5 feet in depth and must not exceed 10 feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers, must extend a minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks under miscellaneous regulations.

Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

### f) Miscellaneous Regulations:

Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes. Red corks are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate

to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

Columbia River tangle net certification: At least one fisher on each boat must have tangle net certification, which is obtained by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

Nothing in this section sets any precedent for any fishery after this spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If the department authorizes a tangle net fishery any other time, WDFW may establish qualifications and requirements that are different from those established for this season. In particular, the department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

12-hour quick reporting is required for Washington wholesale dealers, WAC 220-69-240.

## 2. Blind Slough Select Area

a) Area: Only Blind Slough area open during winter season (see dates below), and both Blind Slough and Knappa Slough areas open during spring season (see dates below). From May 3 through June 11, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (boundary used in fall season).

b) Dates: Winter Season: Open hours 7:00 p.m. to 7:00 a.m. on Sunday night April 4, 2010.

Spring Season: Open hours 7:00 p.m. to 7:00 a.m. Monday and Thursday nights from April 15 through June 11, 2010.

c) Gear: Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh.

d) Allowable sales: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers.

## 3. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: Winter Season: Open hours 7:00 p.m. to 7:00 a.m. on Monday and Wednesday nights immediately through April 8, 2010.

Spring Season: Open hours 7:00 p.m. to 7:00 a.m. on Sunday and Wednesday nights from April 14 through June 10, 2010.

c) Gear: Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to any stationary structures. Nets may not fully cross the navigation channel. Winter season: 7-inch minimum mesh. Spring season: 9-3/4 inch maximum mesh.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

f) 24-hour quick reporting in effect for Washington buyers.

## 4. Tongue Point

a) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: Open hours are 7:00 p.m. to 7:00 a.m. on Monday and Thursday nights from April 19 through June 11, 2010.

c) Gear: In the Tongue Point fishing area, gear restricted to 9-3/4 inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9-3/4 inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during

each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: During April 19 through May 14, transportation or possession of fish outside the fishing area is unlawful until ODFW staff has biologically sampled individual catches. A sampling station will be established at the MERTS dock for the first eight fishing periods. After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 17, fishers are required to call 503-428-0518 and leave a message including name, catch and where and when fish will be sold.

f) 24-hour quick reporting in effect for Washington buyers.

**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.

**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.

**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 section of the Washington Administrative Code is repealed effective 12:00 p.m. March 30, 2010:

WAC 220-33-01000X Columbia River seasons below Bonneville. (10-38)

The following section of the Washington Administrative Code is repealed effective June 12, 2010:

WAC 220-33-01000Y Columbia River seasons below Bonneville.

### **WSR 10-08-026**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed March 31, 2010, 8:15 a.m., effective April 1, 2010]

Effective Date of Rule: April 1, 2010.

Purpose: This amends the current WAC to bring it into full compliance with Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, Public Law 111-3, Section 214.

Specifically, the department is adding certain permanently residing under color of law (PRUCOL) aliens in the group eligible for pregnancy medical and children's medical, and updating Social Security requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0009 and 388-424-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Other Authority: CHIPRA (Public Law 111-3, Section 214).

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: Emergency rule adoption is required in order for the department to bring the WAC into compliance with federal CHIPRA legislation which extended medicaid benefits to not only qualified aliens but to certain PRUCOL aliens as well.

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

Number of Sections Adopted at Request of a Nongovernmental 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 2, Repealed 0.

Date Adopted: March 24, 2010.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-15-004, filed 7/7/04, effective 8/7/04)

**WAC 388-424-0009 Citizenship and alien status—Social Security number (SSN) requirements.** (1) A "qualified alien," as defined in WAC 388-424-0001, who has applied for a Social Security number (SSN) as part of their application for benefits cannot have benefits delayed, denied, or terminated pending the issuance of the SSN by the Social Security Administration (SSA).

(2) The following immigrants are not required to apply for an SSN:

(a) An alien, regardless of immigration status, who is applying for a program listed in WAC 388-476-0005(7);

(b) A PRUCOL alien (~~as defined in WAC 388-424-0001~~) who is not in one of the PRUCOL groups listed in WAC 388-424-0010(4); and

(c) Members of a household who are not applying for benefits for themselves.

(3) "Qualified aliens," as defined in WAC 388-424-0001, and PRUCOL aliens in any of the PRUCOL groups listed in WAC 388-424-0010(4), who are applying for federal benefits but who are not authorized to work in the U.S., must still apply for a nonwork SSN. The department must assist them in this application without delay.

(4) An immigrant who is otherwise eligible for benefits may choose not to provide the department with an SSN without jeopardizing the eligibility of others in the household. See WAC 388-450-0140 for how the income of such individuals is treated.

AMENDATORY SECTION (Amending WSR 09-15-082, filed 7/14/09, effective 8/14/09)

**WAC 388-424-0010 Citizenship and alien status—Eligibility (~~(restrictions)~~) for TANF, (~~(nonemergency)~~) medicaid, and (~~(SCHHP)~~) CHIP.** (1) To receive TANF, (~~(nonemergency)~~) medicaid, or (~~(SCHHP)~~) CHIP, you must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A U.S. citizen;  
 (b) A U.S. national;  
 (c) An American Indian born outside the U.S.;  
 (d) A "qualified alien";  
 (e) A victim of trafficking;  
 (f) A Hmong or Highland Lao; or  
 (g) A special immigrant from Iraq or Afghanistan eligible for eight months of federally funded assistance from your date of entry into the United States or from the date you received special immigrant status.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, (~~(nonemergency)~~) medicaid, and (~~(SCHHP)~~) CHIP.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, (~~(nonemergency)~~) medicaid, or (~~(SCHHP)~~) CHIP for five years after obtaining status as a qualified alien unless(=

~~(a) He or she is an alien as described in WAC 388-424-0006(4); or~~

~~(b) He or she is an alien as described in WAC 388-424-0006(5) applying for nonemergency medicaid or SCHHP)) the criteria in WAC 388-424-0006 (4) or (5) are met.~~

(4) A child or pregnant woman in one of the following PRUCOL groups may receive medicaid or CHIP:

(a) A citizen of a compact of free association state (Micronesia, Marshall Islands or Palau) who has been admitted to the U.S. as a nonimmigrant;

(b) An individual in temporary resident status as an amnesty beneficiary;

(c) An individual in temporary protected status;

(d) A family unity beneficiary;

(e) An individual currently under deferred enforced departure;

(f) An individual who is a spouse or child of a U.S. citizen with an approved Visa petition pending adjustment of status;

(g) A parent or child of an individual with special immigration status;

(h) A fianc of a U.S. citizen;

(i) A religious worker;

(j) An individual assisting the Department of Justice in a criminal investigation; or

(k) An individual with a petition of status pending of three years or longer.

(5) An alien who is ineligible for TANF, medicaid or CHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien (~~(emergency)~~) medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (SFA, GA and ADATSA) and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits as described in WAC 388-462-0015; or

(d) (~~(Children's healthcare benefits)~~) Apple health for kids as described in WAC 388-505-0210 (2) or (5).

**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 10-08-027

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 31, 2010, 8:22 a.m., effective April 1, 2010]

Effective Date of Rule: April 1, 2010.

Purpose: The recent passage of the federal Children's Health Insurance Program Reauthorization Act (CHIPRA) requires the department to amend its rules regarding newborn eligibility for medical assistance. Per clarification from the federal Centers for Medicare and Medicaid Services' (CMS), CHIPRA also requires the elimination of the three-month sanction for nonpayment of the children's health insurance program (CHIP) premium, and allow for medical coverage to be reinstated for all months within the certification period when payment of the delinquent premium is made prior to the end of the certification period. This change to Washington's CHIP program will meet "continuous eligibility" as an enrollment and retention strategy as defined in CHIPRA, which will qualify Washington for the performance bonus described in CHIPRA Section 104.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015, 388-450-0215, 388-505-0210, 388-505-0211, and 388-542-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090; Apple Health for Kids Act (ESHB 2128); and 42 U.S.C. 1305.

Other Authority: Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009).

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

Reasons for this Finding: This change will allow the department to extend medical assistance to newborns who are not eligible under the current rule and will allow vulnerable children to remain connected to healthcare coverage. This change will also allow Washington to qualify for performance bonus funding as described in CHIPRA, Section 104.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, 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 Request of a Nongovernmental 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 5, Repealed 0.

Date Adopted: March 23, 2010.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-07-086, filed 3/17/09, effective 4/17/09)

**WAC 388-416-0015 Certification periods for categorically needy (CN) scope of care medical assistance programs.** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) scope of care medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out-of-state, failing to pay a required premium(s), incarceration or death.

(6) When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services (see WAC 388-505-0230) on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for exceeding age nineteen.

(7) For an SSI-related person the certification period is twelve months.

(8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

(a) Approved application for cash or food assistance; or

(b) Completed eligibility review.

(9) A retroactive certification period can begin up to three months immediately before the month of application when:

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

(10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months preceding the month of application, but no earlier than the month of conception. Eligibility continues as described in subsection (3);

(b) A child is eligible for a CN medical program as described in WAC 388-505-0210 (1) through ~~((4))~~ (5) and ~~((6))~~ (7) in one of the three months preceding the month of application. Eligibility continues for twelve months from the earliest month that the child is determined eligible.

(11) Any months of a retroactive certification period are added to the designated certification periods described in this section.

(12) Coverage under premium-based programs included in apple health for kids as described in WAC 388-505-0210 and chapter 388-542 WAC begins no sooner than the month after creditable coverage ends.

**AMENDATORY SECTION** (Amending WSR 08-02-054, filed 12/28/07, effective 2/1/08)

**WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?** (1) We decide if your assistance unit (AU) is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's gross monthly income and expenses. This is known as prospective budgeting.

(2) We use your current, past, and future circumstances for a representative estimate of your monthly income.

(3) We may need proof of your circumstances to ensure our estimate is reasonable. This may include documents, statements from other people, or other proof as explained in WAC 388-490-0005.

(4) We use one of two methods to estimate income:

(a) **Anticipating monthly income (AM):** With this method, we base the estimate on the actual income we expect your AU to receive in the month (see subsection (5)); and

(b) **Averaging income (CA):** With this method, we add the total income we expect your AU to receive for a period of time and divide by the number of months in the period (see subsection (6)).

(5) Anticipating monthly income: We must use the anticipating monthly method:

(a) For the month you apply for benefits unless:

(i) We are determining eligibility for ~~((children's medical))~~ apple health for kids programs as listed in WAC 388-



505-0210 ~~((3) through (6))~~, or pregnancy medical as listed in WAC 388-462-0015. For ~~((children's))~~ apple health for kids and pregnancy medical we can use either method; or

(ii) You are paid less often than monthly (for example: you are paid quarterly or annually). If you are paid less often than monthly, we average your income for the month you apply. Section (6) explains how we average your income.

(b) When we estimate income for anyone in your AU, if you or anyone in your AU receive SSI-related medical benefits under chapter 388-475 WAC.

(c) When we must allocate income to someone who is receiving SSI-related medical benefits under chapter 388-475 WAC.

(d) When you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021. In this situation, we must use anticipating monthly (AM) for all your AU's income.

(e) To budget SSI or Social Security benefits even if we average other sources of income your AU receives.

(6) Averaging income: When we average your income, we consider changes we expect for your AU's income. We determine a monthly amount of your income based on how often you are paid:

(a) If you are paid weekly, we multiply your expected income by 4.3;

(b) If you are paid every other week, we multiply your expected income by 2.15;

(c) In most cases if you receive your income other than weekly or every other week, we estimate your income over your certification period by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the time frame; and

(iii) Using the result as a monthly average.

(d) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

(7) If we used the anticipating monthly income method for the month you applied for benefits, we may average your income for the rest of your certification period if we do not have to use this method for any other reason in section (5).

(8) If you report a change in your AU's income, and we expect the change to last through the end of the next month after you reported it, we update the estimate of your AU's income based on this change.

(9) If your actual income is different than the income we estimated, we don't make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless you meet one of the following conditions:

(a) You provided incomplete or false information; or

(b) We made an error in calculating your benefits.

AMENDATORY SECTION (Amending WSR 09-07-086, filed 3/17/09, effective 4/17/09)

**WAC 388-505-0210 ~~((Children's healthcare))~~ Apple health for kids programs.** Funding for ~~((children's health-care))~~ coverage under the apple health for kids may come through Title XIX (medicaid), Title XXI ~~((SCHHP))~~ CHIP, or through state-funded programs. There are no resource limits for ~~((children's healthcare))~~ the apple health for kids programs. ~~((Children's healthcare programs that fall under the apple health for kids umbrella are described in subsections (1) through (4) below))~~ Apple health for kids coverage is free to children in households with incomes of no more than two-hundred percent of the federal poverty level (FPL), and available on a premium basis to children in households with incomes of no more than three-hundred percent FPL.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The ~~((child's))~~ newborn's mother ~~((was))~~ is eligible for ~~((and receiving))~~ medical assistance ~~((at the time))~~;

(i) On the date of the ((child's)) newborn's birth, including a retroactive eligibility determination; ((and)) or

(ii) Based on meeting a medically needy (MN) spend-down liability with expenses incurred on, or prior to, the date of the newborn's birth.

~~((b) The ((child remains with the mother and resides in the state))~~ newborn is a resident of the state of Washington.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or qualified aliens as described in WAC 388-424-0001 and 388-424-0006 ~~(1), (4), and (5))~~ are eligible for free federally matched CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A Social Security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two hundred percent of federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are eligible for SSI-related CN ~~((or MN))~~ coverage.

(3) Noncitizen children under the age of nineteen, who do not meet qualified alien or permanently residing under color of law (PRUCOL) status as described in WAC ~~((388-424-0006))~~ 388-424-0010, are eligible for free state-funded ~~((CN))~~ coverage with the same scope of services as children covered by CN medicaid when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or qualified aliens as described in WAC 388-424-0001 and 388-424-0006 (1), (4), and (5)) are eligible

for premium-based federally-matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A social security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three-hundred percent FPL at each application or review;

~~((e))~~ (e) They do not have other creditable health insurance as described in WAC 388-542-0050; and

~~((f))~~ (f) They pay the required monthly premiums as described in WAC 388-505-0211

(5) Noncitizen children under the age of nineteen, who do not meet qualified alien or PRUCOL status as described in WAC 388-424-0010, are eligible for premium-based state-funded coverage with same scope of services as children covered by CN medicaid when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two-hundred percent FPL, as described in WAC 388-478-0075, but not over three-hundred percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premium as described in WAC 388-505-0211.

(6) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c);

(b) Are ineligible for other ~~((federal medicaid))~~ federally-matched CN programs; ~~((and))~~

(c) Have income that exceeds three hundred percent FPL; or

(d) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (4) of this section because of creditable coverage; and

(e) Meet their spenddown ~~((obligation))~~ liability as described in WAC 388-519-0100 and 388-519-0110.

~~((6))~~ (7) Children under the age of ~~((twenty-one))~~ nineteen who reside or are expected to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, institution for mental diseases (IMD) or inpatient psychiatric facility may be eligible for apple health for kids healthcare coverage based upon institutional rules described in WAC 388-505-0260. Individuals between the age of nineteen and twenty-one may still be eligible for healthcare coverage but not under the apple health for kids programs. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care(-)" for more information.

~~((7))~~ (8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility requirements for residency, social security number, and citizenship as described in subsection (2)(a), (b) and (c) are eligible for federally-matched CN medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if the children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

~~((8))~~ (9) Children are eligible for state-funded CN coverage through the month of their eighteenth birthday if they:

(a) Are in foster care under the legal responsibility of the state or a federally-recognized tribe located within the state; and

(b) Do not meet social security number and citizenship requirements in subsection (2)(b) and (c) of this section.

(10) Children who receive subsidized adoption services are eligible for federally-matched CN ~~((medicaid))~~ coverage.

~~((9))~~ (11) Children under the age of nineteen not eligible for apple health for kids programs listed above may ~~((also))~~ be eligible for one of the following medical assistance programs not included in apple health for kids:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100; or

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e); and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

~~((10))~~ Children who are ineligible for other programs included in apple health for kids may be eligible for the alien emergency medical program (AEM) if they meet the following criteria:

(a) They have a documented emergent medical condition as defined in WAC 388-500-0005;

(b) They meet the other AEM program requirements as described in WAC 388-438-0110; and

(c) They have income that exceeds three hundred percent FPL; or

(d) They are disqualified from receiving premium-based coverage as described in subsection (4) of this section because of creditable coverage or nonpayment of premiums.

~~((11))~~ (d) Home and community based waiver programs as described in chapter 388-515 WAC; or

(e) Alien medical as described in WAC 388-438-0110, if they:

(i) Have a documented emergency medical condition as defined in WAC 388-500-0005;

(ii) Have income more than three hundred percent FPL; or

(iii) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (5) of this section because of creditable coverage.

(12) Except for a ~~((client))~~ child described in subsection ~~((6))~~ (7), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any ~~((children's healthcare))~~ apple health for kids program.

AMENDATORY SECTION (Amending WSR 09-07-086, filed 3/17/09, effective 4/17/09)

**WAC 388-505-0211 Premium requirements for premium-based healthcare coverage under programs included in apple health for kids.** (1) For the purposes of this chapter, "**premium**" means an amount paid for healthcare coverage under programs included in apple health for kids.

(2) Payment of a premium is required as a condition of eligibility for premium-based coverage under programs included in apple health for kids, as described in WAC 388-505-0210(4), unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaska native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.

(4) The premium amount for the assistance unit is based on the net countable income as described in WAC 388-450-0210 and the number of children in the assistance unit. If the household includes more than one assistance unit, the premium amount billed for the assistance units may be different amounts.

(5) The premium amount for each eligible child shall be:

(a) Twenty dollars per month per child for households with income above two hundred percent FPL, but not above two hundred and fifty percent FPL;

(b) Thirty dollars per month per child for households with income above two hundred and fifty percent FPL, but not above three hundred percent FPL; and

(c) Limited to a monthly maximum of two premiums for households with two or more children.

(6) All children in an assistance unit are ineligible for healthcare coverage when the head of household fails to pay required premium payments for three consecutive months.

(7) When the department terminates the medical coverage of a child due to nonpayment of premiums, the ~~((child has a three-month period of ineligibility beginning the first of the following month. The three-month period of))~~ child's ineligibility is rescinded only when the:

(a) Past due premiums are paid in full prior to the ~~((begin date of the period of ineligibility))~~ end of the certification period; or

(b) The child becomes eligible for coverage under a non-premium-based CN healthcare program. ~~((The department will not rescind the three-month period of ineligibility for reasons other than the criteria described in this subsection.))~~

(8) The department writes off past-due premiums after twelve months.

(9) ~~((When the designated three-month period of ineligibility is over, all past due premiums that are an obligation of the head of household must be paid or written off before a child can become eligible for premium-based coverage under~~

~~a program included in apple health for kids))~~ If all past due premiums are paid after the certification period is over, then:

(a) Ineligibility for prior months is not rescinded; and

(b) Children are not eligible for premium-based coverage under apple health for kids until the month the premiums are paid or the department writes off the debt.

(10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the assistance unit. The full premium amount is the obligation of the head of household of the assistance unit. A family can decide to request healthcare coverage only for certain children in the assistance unit, if they want to reduce premium obligation.

(11) A change that affects the premium amount is effective the month after the change is reported and processed.

(12) A sponsor or other third party may pay the premium on behalf of the child or children in the assistance unit. The premium payment requirement remains the obligation of head of household of the assistance unit. The failure of a sponsor or other third party to pay the premium does not eliminate the(=

~~(a) Establishment of the period of ineligibility described in subsection (7) of this section; or~~

~~(b) Obligation of the head of household to pay past due premiums))~~ obligation of the head of household to pay past due premiums.

AMENDATORY SECTION (Amending WSR 09-07-086, filed 3/17/09, effective 4/17/09)

**WAC 388-542-0020 Other rules that apply to premium-based healthcare coverage under programs included in apple health for kids.** In addition to the rules of this chapter, children receiving premium-based coverage under ~~((programs included in))~~ apple health for kids are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, 388-538-063, and 388-538-065) if the child is covered under federally matched CN coverage;

(2) WAC 388-505-0210 (4) and (5), ~~((Children's healthcare))~~ apple health for kids program eligibility;

(3) WAC 388-505-0211, Premium requirements for premium-based coverage under programs included in apple health for kids;

(4) WAC 388-416-0015(12), Certification periods for categorically needy (CN) scope of care medical assistance programs; and

(5) WAC 388-418-0025, Effect of changes on medical program eligibility.

#### WSR 10-08-035

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 10-69—Filed March 31, 2010, 1:55 p.m., effective March 31, 2010, 1:55 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 recreational salmon and steelhead pilot program endorsement was authorized by SB 5421 during the 2009 legislature. This rule is interim until permanent rules take effect.

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 Request of a Nongovernmental 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: March 31, 2010

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

##### **WAC 220-55-23000A Columbia River endorsement.**

Effective April 1, 2010, anglers fifteen years of age or older must be in possession of a valid Columbia River endorsement to fish for salmon or steelhead in the following waters:

Mainstem Columbia River from the Rocky Point/Tongue Point line to

Chief Joseph Dam  
Deep River (Wahkiakum County)  
Grays River (Wahkiakum County)  
Grays River, West Fork  
Grays River, East Fork  
Skamokawa River (Wahkiakum County)  
Elochoman River (Wahkiakum County)  
Mill Creek (Lewis County)  
Abernathy Creek (Cowlitz County)  
Germany Creek (Cowlitz County)  
Coal Creek (Cowlitz County)  
Cowlitz River (Cowlitz County)  
Blue Creek  
Lacamas Creek  
Mill Creek  
Olequa Creek  
Tilton River  
Mayfield Lake  
Lake Scanewa

Cispus River (Lewis County)  
Coweeman River (Cowlitz County)  
Toutle River (Cowlitz County)  
Toutle River, North Fork  
Toutle River, South Fork  
Green River (Cowlitz County)  
Green River (Cowlitz County)  
Kalama River (Cowlitz County)  
Lewis River (Clark/Cowlitz counties)  
Lewis River, North Fork  
Lewis River, East Fork  
Cedar Creek  
Salmon Creek (Clark County)  
Washougal River (Clark County)  
Washougal River West, North Fork  
Little Washougal  
Camas Slough (Clark County)  
Drano Lake (Skamania County)  
Hamilton Creek (Skamania County)  
Rock Creek (Skamania County)  
Wind River (Skamania County)  
White Salmon River (Klickitat/Skamania counties)  
Klickitat River (Klickitat County)  
Walla Walla River (Walla Walla County)  
Mill Creek (Walla Walla County)  
Touchet River (Columbia/Walla Walla counties)  
Grande Ronde River (Asotin County)  
Snake River mainstem  
Palouse River (Whitman County)(below the falls)  
Tucannon River (Columbia/Garfield counties)  
Yakima River (Benton/Yakima/Kittitas counties)  
Wenatchee River  
Icicle River (Chelan County)  
Lake Wenatchee (Chelan County)  
Entiat River (Chelan County)  
Methow River (Okanogan County)  
Okanogan River (Okanogan County)  
Lake Osoyoos (Okanogan County)  
Similkameen River (Okanogan County)

#### **WSR 10-08-043 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 10-70—Filed April 2, 2010, 9:24 a.m., effective April 5, 2010, 7:00 p.m.]

Effective Date of Rule: April 5, 2010, 7:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Y and 220-33-01000Z; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *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: Rescinds the final two winter season fishing periods in the Deep River select area fishery. Encounters of nonlocal stocks have been higher than anticipated. Limited ESA impacts are available for this fishery. Foregoing the final two winter periods minimizes potential for inseason management of the spring season. Season is consistent with compact action of April 1, 2010. The fishery is consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the associated biological opinion, and Washington fish and wildlife commission guidelines. Conforms Washington state rules with Oregon state rules. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, 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 2008-2017 *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, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington and Oregon departments of fish and wildlife convene public hearings and take public testimony when considering propos-

als for new emergency rules. Washington department of fish and wildlife and Oregon department of fish and wildlife then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental 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: April 2, 2010

Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000Z Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, 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:

### 1. Blind Slough Select Area

a) Area: Only Blind Slough area open during winter season (see dates below), and both Blind Slough and Knappa Slough areas open during spring season (see dates below). From May 3 through June 11, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (boundary used in fall season).

b) Dates: Winter Season: Open hours 7:00 p.m. to 7:00 a.m. on Sunday night April 4, 2010.

Spring Season: Open hours 7:00 p.m. to 7:00 a.m. on Monday and Thursday nights from April 15 through June 11, 2010.

c) Gear: Nets are restricted to 100 fathoms in length, with no weight restriction on headline. Use of additional weights or anchors attached directly to the headline is allowed. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh.

d) Allowable sales: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers.

## 2. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: Open hours 7:00 p.m. to 7:00 a.m. on Sunday and Wednesday nights from April 14 through June 10, 2010.

c) Gear: 9-3/4 inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to any stationary structures. Nets may not fully cross the navigation channel. Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

d) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

e) 24-hour quick reporting in effect for Washington buyers.

## 3. Tongue Point

a) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: Open hours are 7:00 p.m. to 7:00 a.m. on Monday and Thursday nights from April 19 through June 11, 2010.

c) Gear: In the Tongue Point fishing area, gear restricted to 9-3/4 inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9-3/4 inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: During April 19 through May 14, transportation or possession of fish outside the fishing area is unlawful until ODFW staff has biologically sampled individual catches. A sampling station will be established at the MERTS dock for the first eight fishing periods. After sampling, fishers will be issued a transportation permit by agency

staff. Beginning May 17, fishers are required to call 503-428-0518 and leave a message including name, catch and where and when fish will be sold.

f) 24-hour quick reporting in effect for Washington buyers.

**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.

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

## REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. April 5, 2010:

WAC 220-33-01000Y Columbia River seasons below Bonneville. (10-68)

The following section of the Washington Administrative Code is repealed effective June 12, 2010:

WAC 220-33-01000Z Columbia River seasons below Bonneville.

## WSR 10-08-051

### EMERGENCY RULES

### DEPARTMENT OF FISH AND WILDLIFE

[Order 10-71—Filed April 5, 2010, 11:10 a.m., effective April 8, 2010, 12:01 a.m.]

Effective Date of Rule: April 8, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900K; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is necessary to assure a safe and successful kids fish-in event. Trout will be stocked two days prior to the event to acclimate them. Closing the pond prior to the event will ensure there are fish for participants to catch. On the day of the event preregistered kids will be allowed to fish in these netted areas. The reason for keeping the pond closed after the event is to ensure the safety of the public as well as the event participants while the event is shutting down and equipment and nets are being removed. 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 Request of a Nongovernmental 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: April 5, 2010.

Philip Anderson  
Director

### NEW SECTION

**WAC 232-28-61900K Exceptions to statewide rules—Kliline Pond (Clark Co.)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 8, 2010 through April 10, 2010, it is unlawful to fish in those waters of Kliline Pond, except as provided in this section:

(a) Open to fishing 8:00 a.m. to 3:00 p.m. April 10, 2010, in the netted area to juvenile anglers participating in the Kid's Fish-In Event.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 11, 2010:

WAC 232-28-61900K      Exceptions to statewide rules—Kliline Pond (Clark Co.)

**WSR 10-08-065**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Division of Consumer Services)

[Filed April 6, 2010, 9:48 a.m., effective April 6, 2010, 9:48 a.m.]

Effective Date of Rule: Immediately.

Purpose: The general welfare of the public who use unsecured consumer loans must be protected from unreasonable fees. Some licensees formerly operating under chapter 31.45 RCW (the payday lending law) have begun offering products under the Consumer Loan Act that mirror small loans, but with unconscionable terms that fail to provide the protections of the payday lending law. Under the payday lending law, new consumer protections begin in January that limit the fees on payday loans. They also provide consumers with a free installment plan option. In amending the payday lending law, the legislature specifically sought to limit fees and provide a mechanism for borrowers with multiple loans to pay off the loans over a period of time without having to reloan, continuing their cycle of debt. This emergency rule

would serve as a stopgap to allow the department of financial institutions (DFI) to protect the welfare of the public while seeking a more permanent solution through rule making or the legislature. The DFI has begun rule making to permanently adopt the rule on this topic, see WSR 10-07-099.

Citation of Existing Rules Affected by this Order: Amending WAC 208-620-515.

Statutory Authority for Adoption: RCW 31.04.165, 43.320.040.

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

Reasons for this Finding: Due to changes in chapter 31.45 RCW some licensees have obtained a license under chapter 31.04 RCW, the Consumer Loan Act, in order to use a specific provision within that act, RCW 31.04.115(3), to charge exorbitant fees to borrowers. In one example, a consumer loan of \$600 generated a participation fee of \$1,980, payable over twelve months, in addition to the statutorily allowed interest rate. This is equivalent to an APR of over four thousand percent. Additionally, the participation fee is charged monthly if the small loan is paid off but the line of credit account is kept open. If this rule were amended by the notice and negotiated rule-making process, great harm could occur to the borrowers who need the consumer loan now. Consumer demand is presently high due to the economic downturn causing both increased unemployment and the tightening of normal credit sources, which increases the necessity of immediate action. DFI has begun a notice and negotiated rule making (filed March 19, 2010, under WSR 10-07-099) but in the interim needs to be able to protect the welfare of the consumers and prevent lenders from circumventing the will of the legislature.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 6, 2010.

Deborah Bortner, Director  
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-515 What authority do I have as a licensee?** As a licensee you may:

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2)(a) Make open-end loans as provided in RCW 31.04.115.

(b) The annual fee allowed in RCW 31.04.115(3) may not exceed fifty dollars.

(c) The fee must be charged in advance and must be charged as a lump sum. It must not be charged monthly and must not be financed.

(d) You are allowed to charge a fee to terminate or close the line of credit account only if you have not charged an annual fee. The fee to terminate or close the account must not exceed fifty dollars.

(3) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

**WSR 10-08-073**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-72—Filed April 6, 2010, 12:56 p.m., effective April 16, 2010, 12:01 a.m.]

Effective Date of Rule: April 16, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900L; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 closure of Long's Pond is necessary to allow staff to set nets and stock fish for the April 17, 2010, fishing activities and ensure a successful family fish-in (kid's fish-in) event. 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 Request of a Nongovernmental 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: April 6, 2010.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900L Exceptions to statewide rules—Long's Pond (Thurston Co.)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 16 through 8:00 a.m. April 17, 2010, it is unlawful to fish in those waters of Long's Pond.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:01 a.m. April 17, 2010:

WAC 232-28-61900L	Exceptions to statewide rules—Long's Pond (Thurston Co.)
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**WSR 10-08-077**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-74—Filed April 6, 2010, 1:41 p.m., effective April 6, 2010, 1:41 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Q; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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: Sufficient numbers of stocked chinook salmon are available to continue the fishery in Lake



Chelan. This rule is interim until permanent rules take effect May 1, 2010.

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 Request of a Nongovernmental 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: April 6, 2010.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900Q Exceptions to statewide rules—Lake Chelan (Chelan Co.)** Notwithstanding the provisions of WAC 232-28-619, effective immediately through April 30, 2010, a person may fish for salmon in waters of Lake Chelan, except closed within 400 feet of the mouth of all tributaries. Daily limit of one Chinook salmon; minimum size 15 inches in length.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2010:

WAC 232-28-61900Q	Exceptions to statewide rules—Lake Chelan (Chelan Co.)
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**WSR 10-08-078  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-73—Filed April 6, 2010, 1:53 p.m., effective April 7, 2010, 5:30 p.m.]

Effective Date of Rule: April 7, 2010, 5:30 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Z and 220-33-01000A; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *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: Sets the second commercial mainstem chinook fishing period. An estimated six thousand five hundred chinook remain available for harvest (prerun update). The fishery is restricted through time, area and gear regulations to ensure the fishery remains within catch-balancing and ESA constraints. Season is consistent with compact action of April 5, 2010. The fishery is consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the associated biological opinion, and Washington fish and wildlife commission guidelines. Conforms Washington state rules with Oregon state rules. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, 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 2008-2017 *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, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington and Oregon departments of fish and wildlife convene public hearings and take public testimony when considering propos-

als for new emergency rules. Washington department of fish and wildlife and Oregon department of fish and wildlife then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental 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: April 6, 2010.

Lori Preuss  
for Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000A Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, 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:

### **1. Mainstem Columbia River**

a) Area: SMCRA 1A, 1B, 1C, and 1D only upstream to the I-205 Bridge.

b) Dates: 5:30 PM to 9:30 PM (4 hours) Wednesday, April 7, 2010.

c) Allowable Sales: Adipose fin-clipped salmon, white sturgeon (43-54 inch fork length), and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin.

d) Sanctuaries: Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers as applicable.

e) Gear: Drift gill nets only, 4-1/4 inch maximum mesh.

Monofilament gill nets are not allowed for the 4-1/4 inch mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

Net length not to exceed 150 fathoms, except under the following conditions: Tangle nets constructed with a steel-

head excluder panel, weedlines, or droppers may extend to a maximum length of 175 fathoms.

An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel must be a minimum of 5 feet in depth and must not exceed 10 feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks required under miscellaneous regulations.

Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

### f) Miscellaneous Regulations:

24-hour quick reporting is required for Washington wholesale dealers, WAC 220-69-240.

Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes.

Red corks are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above

the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

Columbia River tangle net certification: At least one fisher on each boat must have tangle-net certification, which is obtained by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

Nothing in this section sets any precedent for any fishery after this spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If the department authorizes a tangle-net fishery at any other time, WDFW may establish qualifications and requirements that are different from those established for this season. In particular, the department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

## 2. Blind Slough Select Area

a) Area: Blind Slough and Knappa Slough. From May 3 through June 11, 2010, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (boundary used in fall season).

b) Dates: Open hours 7:00 p.m. to 7:00 a.m. on Monday and Thursday nights from April 15 through June 11, 2010.

c) Gear: Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. 9 3/4-inch maximum mesh.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers.

## 3. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: Open hours 7:00 p.m. to 7:00 a.m. on Sunday and Wednesday nights from April 14 through June 10, 2010.

c) Gear: 9-3/4 inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

f) 24-hour quick reporting in effect for Washington buyers.

## 4. Tongue Point

a) Area: Tongue Point fishing area includes all waters bounded by a line extending from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: Open hours are 7:00 p.m. to 7:00 a.m. on Monday and Thursday nights from April 19 through June 11, 2010.

c) Gear: In the Tongue Point fishing area, gear restricted to 9-3/4 inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9-3/4 inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: During April 19 through May 14, transportation or possession of fish outside the fishing area is unlawful until ODFW staff has biologically sampled individual catches. A sampling station will be established at the MERTS dock for the first eight fishing periods. After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 17, fishers are required to call 503-428-0518 and leave a message, including name, catch, and where and when fish will be sold.

f) 24-hour quick reporting in effect for Washington buyers.

**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.

**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 5:30 p.m. April 7, 2010:

WAC 220-33-01000Z Columbia River seasons below Bonneville. (10-68)

The following section of the Washington Administrative Code is repealed effective June 12, 2010:

WAC 220-33-01000A Columbia River seasons below Bonneville.

**WSR 10-08-108  
EMERGENCY RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed April 7, 2010, 9:58 a.m., effective April 7, 2010, 9:58 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amending WAC 296-30-900 to meet the conditions of E2SSB 6504, chapter 122, Laws of 2010. WAC 296-30-900 establishes that the statute in effect when the criminal act occurred is the controlling law. E2SSB 6504 sets maximum benefit levels and makes new benefit reductions retroactive to all claims with dates of criminal acts on or after July 1, 1981. In order to be in compliance with the requirements of the law, WAC 296-30-900 must be amended to refer to E2SSB 6504.

Citation of Existing Rules Affected by this Order: Amending WAC 296-30-900.

Statutory Authority for Adoption: RCW 7.68.030.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The difficult state economy has caused the crime victims compensation program's case-loads and costs to increase significantly. Without modifications to the benefits, the program would have run out of money by May 2010 and would no longer be available to

crime victims. The passing of E2SSB 6504 with reductions in benefits retroactive to claims back to July 1, 1981, provided the funding source needed to keep services available to victims. The bill has a sunset clause of July 1, 2015.

Amending WAC 296-30-900 changes the date of eligibility in accordance with E2SSB 6504. The amendment will allow for the sunset date of July 1, 2015, to eliminate the need for further rule making.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 7, 2010.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 99-07-004, filed 3/4/99, effective 4/4/99)

**WAC 296-30-900 What law controls a claim if a statute is amended after the date of the criminal act?** The statute in effect when the criminal act occurred is the controlling law. The act occurs when the perpetrator commits the criminal conduct, except as provided in chapter 122, Laws of 2010 (E2SSB 6504).

For those crime victims who apply for benefits after April 1, 2010, the law in effect at the time the application is received by the department is the controlling law.