

WSR 10-12-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-116—Filed May 19, 2010, 1:26 p.m., effective June 5, 2010]

Effective Date of Rule: June 5, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900C; 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: Fishing regulations for the Black River were inadvertently removed from the Washington Administrative Code. Sufficient recreational fishing opportunity exists for trout and other game fish in the Black River and tributaries. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 19, 2010.

Lori Preuss
 for Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Black River (Thurston Co.) (1) Notwithstanding the provisions of WAC 232-28-619, effective June 5 through September 30, 2010, a person may fish for gamefish in waters of the Black River from the mouth of Black Lake and all tributaries west of I-5, including Waddell Creek, Mima Creek, Dempsey Creek, Beaver Creek, Salmon Creek and Blooms Ditch, under the following provisions:

(a) Trout - Daily limit 2, minimum size 14 inches in length. Selective gear rules in effect. Internal combustion motors prohibited.

(b) Other game fish - Statewide rules and selective gear rules in effect. Internal combustion motors prohibited.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2010:

WAC 232-28-61900C	Exceptions to statewide rules—Black River (Thurston Co.)
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WSR 10-12-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-125—Filed May 20, 2010, 11:04 a.m., effective May 20, 2010, 11:04 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow nontreaty recreational 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:
 Amending WAC 232-28-619.

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: 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 (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

The sockeye forecast for the Wenatchee River is less than the escapement goal. The permanent rules do not take effect until June. This regulation closes the gap until the permanent rules take effect. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, 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: May 20, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Columbia River:** From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, upstream to the I-5 Bridge: Effective immediately until further notice, release all sockeye.

WSR 10-12-006 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-129—Filed May 20, 2010, 11:05 a.m., effective May 21, 2010, 6:00 p.m.]

Effective Date of Rule: May 21, 2010, 6:00 p.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon 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 and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100G; and amending WAC 220-32-051.

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); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 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: Closes the platform and hook and line fisheries in the mainstem Columbia River above Bonneville Dam because the catch guideline has been achieved for upriver spring chinook. Continues to allow the sale of fish caught in Yakama Nation tributary fisheries by Yakama Nation members. Fisheries are consistent with the 2008-2017 management agreement. Impact limits to ESA-listed chinook are available for treaty Indian fisheries. Rule is consistent with action of the Columbia River compact on May 19, 2010. Conforms state rules with tribal rules.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Shappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new

emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: May 20, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100H Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections, and except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

a) SEASON: The platform and hook and line fisheries will close to fishing effective 6:00 PM Friday May 21, 2010 until 6:00 AM June 16, 2010.

b) AREA: SMCRA 1F, 1G, 1H (Zone 6)

c) GEAR: Hoop nets, dip nets, and rod and reel with hook-and-line.

2. Columbia River Tributaries above Bonneville Dam

a) SEASON: Immediately until further notice and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b) AREA: Drano Lake, White Salmon, and Klickitat and Wind rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake (no mesh restriction, 150-foot length restriction).

3. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, carp, yellow perch, catfish and bass. Sturgeon may not be sold. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence.

4. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. May 21, 2010:

WAC 220-32-05100G Columbia River above Bonneville (10-124)

WSR 10-12-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-130—Filed May 20, 2010, 1:22 p.m., effective May 22, 2010]

Effective Date of Rule: May 22, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900N; 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: Hatchery summer run steelhead are released into the South Fork Toutle and Green rivers. These fish are not needed for broodstock. Opening the lower portions of the South Fork Toutle and Green rivers two weeks early will allow additional opportunity to harvest surplus hatchery steelhead which are returning to other Columbia River tributaries in strong early numbers. 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: May 20, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—South Fork Toutle and Green rivers (Cowlitz Co.)

Notwithstanding the provisions of WAC 232-28-619, effective May 22 through June 4, 2010, the following provisions apply:

(1) In waters of the South Fork Toutle River from the mouth to the 4700 Road Bridge, a person may fish for and possess steelhead. Daily limit of two hatchery steelhead; selective gear rules in effect.

(2) In waters of the Green River from the mouth to 400' below the water intake at the upper end of the hatchery, a person may fish for and possess steelhead. Daily limit of two hatchery steelhead; selective gear rules in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 5, 2010:

WAC 232-28-61900N Exceptions to statewide rules—South Fork Toutle and Green rivers (Cowlitz Co.)

WSR 10-12-008 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-131—Filed May 20, 2010, 1:30 p.m., effective May 22, 2010]

Effective Date of Rule: May 22, 2010.

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: Drano Lake: As of May 19, a total of 3,798 fish had returned to Little White Salmon National Fish Hatchery. Nearly 3,000 of those fish returned within the past few days. The hatchery escapement goal is 1,000 fish. Surplus hatchery fish are available for harvest.

Wind River: Through May 18, a total of 356 fish had returned to Carson National Fish Hatchery. The hatchery escapement goal is 1,500 fish. The hatchery is expected to meet its escapement goal and surplus hatchery origin fish are available for harvest. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: May 20, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Drano Lake and Wind River. Notwithstanding the provisions of WAC 232-28-619:

(1) Drano Lake - Effective May 22 through June 30, 2010, a person may fish in waters downstream of markers on the point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Hwy. 14 Bridge, except closed June 2 and June 9. Daily limit four fish, up to 2 may be hatchery steelhead. Release wild Chinook and wild steelhead. Release all trout other than steelhead. Minimum size 12 inches for salmon and 20 inches for steelhead.

(2) Wind River - Effective May 22 through June 30, 2010, a person may fish in waters from mouth (boundary line/markers) to 400 feet below Shipherd Falls, and from 100 feet above Shipherd Falls to 400 feet below the coffer dam to 800 yards downstream of Carson National Fish Hatchery. Daily limit four fish; up to 2 may be hatchery steelhead. Release wild steelhead and all other game fish. Release wild Chinook downstream from Shipherd Falls. Minimum size 12 inches for salmon and 20 inches for steelhead.

REPEALER

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

WAC 232-28-61900Q Exceptions to statewide rules—Drano Lake and Wind River.

WSR 10-12-017**EMERGENCY RULES****DEPARTMENT OF AGRICULTURE**

[Filed May 21, 2010, 2:19 p.m., effective May 21, 2010, 2:19 p.m.]

Effective Date of Rule: Immediately.

Purpose: This rule-making order amends chapter 16-481 WAC by establishing a quarantine for European grapevine moth. This quarantine requires grapes, grapevines, and equipment and appliances used in the growing, packing or transporting of grapes and grapevines from infested states to be certified free of European grapevine moth. Commercially packed table grapes and seed extracted from grapes are excluded from this quarantine.

Citation of Existing Rules Affected by this Order: Amending WAC 16-481-015.

Statutory Authority for Adoption: Chapters 15.13, 17.24, and 34.05 RCW.

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

Reasons for this Finding: Timely prevention of intrusion into this state of a nonnative, invasive pest species on or in association with horticultural plants and fruit is of grave and immediate concern. The European grapevine moth, a potentially devastating pest that feeds primarily on flowers and berries of grapevines, was first detected in the Napa Valley of California at the end of last year's growing season. This was the first detection of the moth in North America. It has since been detected in several more California counties and appears very likely to spread further, unless strong prevention measures are taken.

Introduction of European grapevine moth into Washington could severely impact grape production and disrupt Washington export markets for many crops, including cherries and red raspberries. For this reason we are implementing a quarantine on European grapevine moth that would require the inspection and, if necessary, treatment of grape plants and plant parts, and equipment or appliances used in the growing, harvesting, processing, or transporting of grape plants or plant parts from California, and any other state or territory of the United States or foreign county [country] where European grapevine moth occurs.

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 5, 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 1, Repealed 0.

Date Adopted: May 21, 2010.

Robert W. Gore

Deputy Director

AMENDATORY SECTION (Amending WSR 04-17-035, filed 8/10/04, effective 9/10/04)

WAC 16-481-015 Definitions. "Commercially packed table grapes" means table grapes in compliance with USDA recommendation for protecting perishable food products shipped interstate (USDA-AMS- Transportation and Marketing Programs. In Protecting Perishable Foods During Transport by Truck, Handbook No. 669 (2006), pp. 40-41).

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or the director's authorized representative.

"European grapevine moth" means the insect *Lobesia botrana* of the order *Lepidoptera* and family *Tortricidae*.

"Grape phylloxera" means the insect *Daktulosphaira vitifoliae* (Fitch) of the order *Homoptera* and family *Phylloxeridae*.

"Hardwood cutting" means a cutting from a grapevine taken during the period of dormancy and not including portions of the trunk of the plant produced during previous growing seasons.

"Infested area" means all states and territories of the United States and all areas outside the United States.

"Softwood cutting" means any cutting taken when the grape plant is not fully dormant.

"Vine mealybug" means the insect *Planococcus ficus* (Signoret) of the order *Homoptera* and family *Pseudococcidae*.

QUARANTINE FOR EUROPEAN GRAPEVINE MOTH

NEW SECTION

WAC 16-481-100 Establishing quarantine. The European grapevine moth is a potentially devastating pest of grapes that has been recently found in California. Currently, it is not present in Washington. Its spread into this state would cause severe damage to the state's grape production and potentially disrupt agricultural export markets. The European grapevine moth feeds on flower buds and fruit, producing both external and internal damage. Often secondary damage is caused by fruit rotting due to fungal pathogens such as *Botrytis cinerea*. Although European grapevine moth is primarily a pest of grapes, it also feeds on other fruit crops including caneberries, cherries, nectarines, and plums. It can be transported on infested fruit, plants, and machinery. The director, under authority provided in chapters 17.24 and 15.13 RCW, establishes a quarantine to prevent the introduction and establishment of European grapevine moth in Washington state.

NEW SECTION

WAC 16-481-105 Quarantine area. There is established under this chapter an external quarantine including the state of California and any other state or territory of the United States or foreign country where European grapevine moth occurs.

NEW SECTION

WAC 16-481-110 Regulated products. All plants and plant parts of *Vitis* species and any equipment or appliances used in the growing, harvesting, processing, or transporting of *Vitis* plants or plant parts, except commercially packed table grapes and seed extracted from the fruit of grapes.

NEW SECTION

WAC 16-481-115 Conditions governing shipments. Regulated products from the regulated area must be accompanied by a phytosanitary certificate issued by the plant protection organization in the state or country of origin stating that:

- (a) The regulated material is from a county known to be free of European grapevine moth, or
- (b) The regulated material originates from a site or facility that has been officially inspected and found free of European grapevine moth, or
- (c) The regulated material has been treated for European grapevine moth by a method approved by the department and has been found to be apparently free of European grapevine moth.

Regulated material that originates in a county known to be free of European grapevine moth may be transported through an infested area by direct route in enclosed vehicles or containers that prevent infestation or exposure to European grapevine moth.

NEW SECTION

WAC 16-481-120 Notification prior to shipment. Persons shipping or transporting articles regulated in WAC 16-481-110 for European grapevine moth into this state from areas under quarantine for European grapevine moth shall notify the plant protection division of the Washington state department of agriculture by U.S. mail, telefacsimile, or email to: Plant Protection Division, Washington State Department of Agriculture, 1111 Washington St. S.E., P.O. Box 42560, Olympia, WA 98504-2560; fax 360-902-2094; e-mail: nursery@agr.wa.gov prior to the shipment of regulated material into this state from a quarantine area. Such notice shall include: a description of the regulated material; the consignee; the method of treatment used, if applicable; and the approximate date of delivery.

WSR 10-12-022**EMERGENCY RULES****DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-132—Filed May 21, 2010, 2:59 p.m., effective May 22, 2010]

Effective Date of Rule: May 22, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: 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: There has been a strong showing of hatchery summer run steelhead on the Cowlitz to date. Through May 15, a total of one hundred sixty-five hatchery summer run steelhead had returned to the Cowlitz Salmon Hatchery.[.] released in 2008. Hatchery adults returning are available for harvest. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: May 21, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules—Cowlitz River. Notwithstanding the provisions of WAC 232-28-619, effective May 22, 2010, until further notice, in those waters of the Cowlitz River from the Highway 4 Bridge at Kelso upstream to Mayfield Dam, special daily limit of three hatchery steelhead may be retained.

WSR 10-12-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-134—Filed May 21, 2010, 3:00 p.m., effective May 22, 2010]

Effective Date of Rule: May 22, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 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: There has been a strong showing of hatchery summer run steelhead on the Washougal to date. Through May 19, a total of three hundred fifty-seven hatchery summer run steelhead had returned to Skamania Hatchery. 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 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: May 21, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Washougal River. Notwithstanding the provisions of WAC 232-28-619, a person may retain up to three hatchery steelhead in the following waters of the Washougal River:

(1) Effective May 22, 2010, until further notice, in the mainstem Washougal River from the mouth to the Mt. Norway Bridge at Vernon Road.

(2) Effective June 5, 2010, until further notice, in the mainstem Washougal River from the Mt. Norway Bridge to Salmon Falls Bridge.

(3) Effective June 5, 2010, until further notice, in the West (North) Fork Washougal River from the intake at Skamania Hatchery, upstream.

WSR 10-12-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-128—Filed May 24, 2010, 2:25 p.m., effective May 24, 2010, 2:25 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-55-160.

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: Free fishing weekend is intended to allow anglers who do not have a license to have a chance to fish. Anglers may also park in department access areas without a vehicle use permit. Requiring anglers to purchase the Columbia River and two-pole endorsements would defeat the purpose of free fishing weekend. 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 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: May 24, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 220-55-16000A Free fishing weekend. Notwithstanding the provisions of WAC 220-55-160, on Free Fishing Weekend, anglers may fish with two poles in all lakes where it is legal to do so, without purchasing a two-pole endorsement, and may also fish in all open areas of the Columbia River and tributaries without purchasing a Columbia River endorsement.

WSR 10-12-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-126—Filed May 24, 2010, 2:33 p.m., effective June 14, 2010]

Effective Date of Rule: June 14, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-071.

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: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. 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 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: May 24, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100C Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective June 14, 2010 until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2 and 3 on Monday and Tuesday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 on Monday through Friday of each week.

(3) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday and

Sunday of each week, except by written permission from the Director.

WSR 10-12-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-127—Filed May 24, 2010, 2:39 p.m., effective May 24, 2010, 2:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-07300M; and amending WAC 220-52-073.

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: Harvestable amounts of red sea urchins exist in the areas described. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. 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: May 24, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07300N Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Red sea urchins: Sea Urchin Districts 1 and 2 are open seven days-per-week.

(2) Red sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed within Sea Urchin Districts 1 and 2.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300M Sea urchins. (10-19)

WSR 10-12-039
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed May 25, 2010, 3:07 p.m., effective May 26, 2010]

Effective Date of Rule: May 26, 2010.

Purpose: The division of child support (DCS) is filing this third emergency rule to maintain the status quo as we await the rule-making hearing for the adoption of final rules. **THESE RULES ARE EXACTLY THE SAME AS THE PRIOR EMERGENCY RULES.** This third set of emergency rules takes effect on May 28, 2010, and is identical in every respect to the prior emergency rules filed as WSR 09-20-030 and 10-04-037.

BASIS FOR ADOPTION OF EMERGENCY RULES: In the 2009 legislative session, the Washington state legislature adopted ESHB 1794 (chapter 84, Laws of 2009), which makes changes to chapter 26.19 RCW, the Washington state child support schedule, based on recommendations of the 2007 child support schedule workgroup which was convened under 2SHB 1009 (chapter 313, Laws of 2007) and SHB 1845 (chapter 476, Laws of 2009), regarding medical support obligations in child support orders. Both of these bills had an effective date of October 1, 2009.

DCS filed emergency rules under WSR 09-20-030 in order to implement this legislation by October 1, 2009. DCS filed the second emergency rules, identical to the first, under WSR 10-04-037 with an effective date of January 28, 2010. The second emergency rules expire May 27, 2010, and a third emergency filing is now necessary.

DCS began the regular rule-making process by filing a CR-101, Preproposal notice of inquiry, for each of the bills: The CR-101 for ESHB 1794 was filed as WSR 09-10-046, and the CR-101 for SHB 1845 was filed as WSR 09-14-075. Because both of the bills impact the establishment of child support obligations, DCS determined that it was necessary to adopt just one set of rules which covers both bills instead of two separate rule-making projects.

DCS has done a significant amount of redrafting and revising the rules from the form in which they were first proposed. After consulting with DCS staff, stakeholders and other partners, DCS intends to file the CR-102, Notice of proposed rule making, in June 2010.

Between the filing of the CR-102 and the public rule-making hearing, DCS will again work with DCS staff, stakeholders and other partners to incorporate more comments and feedback. While the third emergency rules are exactly the

same as the first emergency rules, DCS anticipates that because of the complexity of these two bills the rules proposed in the CR-102 will differ from the emergency rules in several respects, as will the final rules. DCS hopes to have final rules adopted as soon as possible.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3312 The division of child support serves a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support to establish a fixed dollar amount owed under a child support order, 388-14A-3315 When DCS serves a notice of support debt ~~((of))~~, notice of support owed ~~((of))~~, notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support, we notify the other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide ~~((health insurance))~~ medical support for my children, what do I have to do?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ~~((health insurance coverage))~~ medical support?, 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS uses the national medical support notice to enforce an obligation to provide health insurance coverage, 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?, 388-14A-4175 ~~((Is an employer))~~ Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration?, 388-14A-5002 How does DCS distribute support collections in a nonassistance case?, 388-14A-5003 How does DCS distribute support collections in an assistance case?, 388-14A-5004 How does DCS distribute support collections in a former assistance case?, 388-14A-5005 How does DCS distribute federal tax refund offset collections?, 388-14A-5006 How does DCS distribute support collections when the paying parent has more than one case?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation, and 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing

together?; and new section WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?

Statutory Authority for Adoption: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055 (9) and (11).

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: ESHB 1794 (chapter 84, Laws of 2009) and SHB 1845 (chapter 476, Laws of 2009) both had an effective date of October 1, 2009. Although DCS has begun the regular rule-making process to adopt rules under this bill, we were unable to complete the adoption process by the effective date. DCS continues the regular rule-making process and will adopt final rules as soon as possible.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 28, 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 1, Amended 28, Repealed 0.

Date Adopted: May 11, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-13 issue of the Register.

WSR 10-12-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-133—Filed May 25, 2010, 3:45 p.m., effective May 26, 2010]

Effective Date of Rule: May 26, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900F; 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: Washington department of fish and wildlife (WDFW) estimates over eight hundred hatchery origin spring chinook are expected to return to the Entiat River in 2010. WDFW believes a selective fishery to remove excess hatchery spring chinook is warranted to increase the proportion of wild spring chinook on the spawning grounds as detailed in WDFW's ESA Section 10 Application for Permit 1554. No salmon are needed to meet hatchery broodstock objectives. 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: May 25, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Entiat River (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective May 26 through June 30, 2010, a person may fish for salmon in those waters of the Entiat River from the Alternate Highway 97 Bridge, upstream approximately 6 miles to 800 feet downstream of the Entiat National Fish Hatchery fish ladder entrance. Daily limit, two hatchery Chinook salmon, minimum size 12 inches. The anti-snagging rule and a night closure will be in effect, knotless nets are required, and fishing from motorized boats is prohibited.

REPEALER

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

WAC 232-28-61900F	Exceptions to statewide rules—Entiat River.
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WSR 10-12-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-135—Filed May 25, 2010, 3:45 p.m., effective May 25, 2010, 3:45 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 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: Carrie Blake Pond is planted and regulated, in cooperation with the City of Sequim, to provide fishing opportunity for juvenile anglers. An emergency rule is needed to close these waters to all anglers with the exception of juveniles. 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 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: May 25, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Carrie Blake Pond (Clallam Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, only juvenile anglers may fish in waters of Carrie Blake Pond.

WSR 10-12-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-138—Filed May 26, 2010, 1:08 p.m., effective May 26, 2010, 1:08 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-56-25500W; and amending WAC 220-56-255.

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 Marine Area 2 recreational halibut fishery is projected to have taken the Pacific halibut quota set aside for the primary season. A separate quota set aside is sufficient to continue to allow halibut fishing seven days per week in the northern nearshore area. There is sufficient halibut quota remaining in Marine Areas 3 and 4 to reopen the recreational halibut fishery for two days. This rule conforms to federal action taken by the Pacific Fisheries Management Council. 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: May 26, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 220-56-25500X Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N. latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates: Open seven days per week until further notice:

47° 31.70 N. lat, 124° 37.03 W. long

47° 25.67 N. lat, 124° 34.79 W. long

47° 12.82 N. lat, 124° 29.12 W. long

46° 58.00 N. lat, 124° 24.24 W. long

(3) **Catch Record Card Areas 3 and 4** - Open June 3 and June 5, 2010, Thursday and Saturday only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(4) **Catch Record Card Area 5** - Open May 28 through May 30, 2010, Friday through Sunday only. Open June 3 through June 19, 2010, Thursdays through Saturdays only.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open May 28 through May 30, 2010, Friday through Sunday only.

(6) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(7) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-56-25500W Halibut—Areas and seasons.
(10-110)

**WSR 10-12-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-139—Filed May 27, 2010, 2:07 p.m., effective May 27, 2010,
2:07 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100C; and amending WAC 220-52-051.

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 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule: (1) Opens the pot fishery season for spot shrimp; (2) closes Shrimp Management Area 2E to nonspot shrimp fishing as the quota will be attained; (3) requires 1-inch minimum pot mesh size when fishing for spot shrimp; and (4) places a 300-lb weekly limit on spot shrimp for the first two weeks of the season, after which a 600-lb weekly limit goes into effect. 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: May 27, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100D Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 are open to the harvest of all shrimp species effective immediately until further notice.

(b) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3, 4, and 6 outside the Discovery Bay Shrimp District are open to the harvest of all non-spot shrimp species effective immediately until 11:59 p.m. June 14, 2010, except as provided for in this section:

i) All waters of Shrimp Management Area 1A north of a line projected at 48°31.5' N latitude are closed.

ii) All waters of Catch Areas 23A-E, 23A-W, and 23A-C are closed.

iii) Effective 9:00 p.m. June 3, 2010, all waters of Shrimp Management Area 2E are closed.

(c) Effective 12:01 a.m. June 15, 2010, all waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 3, 4, and 6 are

open to the harvest of all shrimp species, until further notice, except as provided for in this section:

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

(ii) All waters of Shrimp Management Area 2E are closed to the harvest of all shrimp species other than spot shrimp.

(d) Effective 12:01 a.m. June 15, 2010, until further notice, only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(e) The shrimp accounting week is Tuesday through Monday.

(f) Effective 12:01 a.m. June 15, 2010, until 11:59 p.m. June 28, 2010, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week.

(g) Effective 12:01 a.m. June 29, 2010, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week.

(h) It is unlawful to pull shellfish pots for commercial purposes in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area the pots are being moved to.

(i) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section (1)(h) above.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B is open, effective immediately until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100C	Puget Sound shrimp pot and beam trawl fishery—Season. (10-92)
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WSR 10-12-063

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed May 27, 2010, 2:13 p.m., effective June 1, 2010]

Effective Date of Rule: June 1, 2010.

Purpose: The purpose of this rule is to amend chapter 246-296 WAC, Drinking water state revolving fund loan program, to include criteria for water systems to obtain a loan as provided in the federal appropriations bill for fiscal year 2010 under section 1452 of the Safe Drinking Water Act.

Citation of Existing Rules Affected by this Order: Amending WAC 246-296-020 Definitions.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: Safe Drinking Water Act.

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: The Administrative Procedure Act allows the department to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) 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;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) 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.

The agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

The 2010 federal appropriations bill, enacted October 31, 2009, funds section 1452 of Safe Drinking Water Act and includes criteria for Group A public water systems that obtain a drinking water state revolving fund (DWSRF) loan. To

make these funds available in Washington state, the department must immediately adopt a rule for the SRF program, as described below.

The enacted bill contains a number of new requirements that are not currently in rule. The state must assure that our requirements align with these requirements in order to receive this funding. Specifically, the bill requires at least thirty percent of the new federal award be given out as subsidy to eligible recipients and at least twenty percent of the federal award must be used for eligible green projects. The current DWSRF rules do not identify any form of funding other than traditional loans with full repayment, nor do they address funding of green projects.

The necessary rule changes must be in place prior to awarding the appropriations funds. In order to award funding to eligible recipients within the current federal fiscal year, the department adopted an emergency rule that includes the appropriations funding criteria. The emergency rule became effective February 1, 2010, and expires May 31, 2010. As part of the funding award process, the department published the ranked intended use plan (IUP) that includes a list of fundable projects for public review and comment. The department must provide the final ranked list to the public works board by June 1, 2010, for their project selection and funding award process to be complete by August 31, 2010.

To complete the process of awarding federal appropriations funds, the rules must be in place so that the public works board can process and award contracts to eligible water system improvement projects. The public works board will not have adequate time to award contracts before the current emergency rule expires. The short time frame between the expiration of the current emergency rule and the deadline for awarding funds does not allow use of the normal rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, 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 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 1, Amended 1, Repealed 0.

Date Adopted: May 27, 2010.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-020 Definitions. "Act" means the Federal Safe Drinking Water Act (SDWA).

"**Application**" means a DWSRF loan application submitted to DOH for DWSRF assistance.

"**Application package**" means DWSRF loan application form(s), requirements, terms of assistance, and related information jointly developed and published by DOH, the board, and the board's agent, ~~((CTED))~~ COM.

"**Binding commitment**" means a legal obligation by the state to an assistance recipient that defines the terms and the timing for assistance under this chapter.

"**Board**" means the state of Washington public works board.

"**Borrower**" means the entity or individual that has the legal and financial responsibility for the loan.

"**Certification/certify**" means documentation signed by the loan recipient that specific requirements or standards have been or will be met.

"**Change orders**" means a formal document that alters specific conditions of the original construction contract document including a change in the scope of work, contract price, construction methods, construction schedule, change in location, size, capacity, or quality of major equipment.

"**COM**" means the department of commerce.

"**Community water system**" means any Group A public water system that regularly serves fifteen or more year-round residential connections, or twenty-five or more year-round residents for one hundred eighty or more days per year.

~~((**Construction documents** means construction documents developed and approved under WAC 246-290-120.))~~

"**Construction completion report**" means a form provided by DOH to the applicant required to be completed for each specific construction project to document project construction in accordance with chapter 246-290 WAC and general standards of engineering practice. The completed form must be stamped with an engineer's seal, signed, and dated by a professional engineer.

"**Construction documents**" means construction documents developed and approved under WAC 246-290-120.

"**Cross-cutting authorities**" means federal or state laws and authorities that apply to projects or activities receiving federal or state assistance.

"**CTED**" means the department of community, trade and economic development.

"**Debt obligation**" means a legal obligation or liability to pay something to someone else.

"**Default**" means failure to meet a financial obligation such as a loan payment.

"**Disadvantaged community**" means the service area of a public water system where at least fifty-one percent of the customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development.

"**Distressed county**" means a county that is designated by the Washington state employment security department as distressed at the time of loan execution.

"**DOH**" means the department of health.

"**Drinking water state revolving fund (DWSRF)**" means the program established to administer the federal funds and other funds deposited in the account authorized to finance water system infrastructure, drinking water program

activities, and to meet the applicable requirements of RCW 70.119A.170.

"Eligible system" means Group A community water systems, both privately and publicly owned, and nonprofit Group A noncommunity water systems.

"EPA" means the United States Environmental Protection Agency.

"Group A system" means a public water system that regularly serves fifteen or more residential connections, or twenty-five or more people per day for sixty or more days per year.

"Group B system" means a public water system that serves less than fifteen residential connections and less than twenty-five people per day, or serves twenty-five or more people per day for sixty or fewer days per year.

"Individual water supply system" means any water system that is not subject to the state board of health drinking water regulations, chapter 246-290 WAC; or chapter 246-291 WAC, providing water to one single-family residence, or four or fewer connections all of which serve residences on the same farm.

"Intended use plan (IUP)" means the federally required document prepared each year by the state which identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

"HUD" means the United States Department of Housing and Urban Development.

"Loan" means an agreement between the DWSRF and the assistance recipient through which the DWSRF provides funds for eligible assistance and the recipient agrees to repay the ((principle)) principal sum to the DWSRF except when the funds are provided in the form of a loan on which all or some of the principal is forgiven.

"Multiple benefit" means project improvements that address more than one type of health risk.

"Noncommunity water system" means a Group A public water system that is not a community water system.

"Nonprofit organization" means a system that has a federal tax exempt status identification number.

"Nontransient noncommunity system" means a Group A noncommunity water system that serves twenty-five or more of the same people per day for one hundred eighty or more days per year.

"Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

"Project report" means a project report developed and approved under chapter 246-290 WAC.

"Public water system" means any system, providing water for human consumption through pipes or other constructed conveyances excluding systems serving only one single-family residence and systems with four or fewer connections all of which serve residences on the same farm.

"Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person, or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities.

"Regional benefit" means project improvements that affect more than one public water system.

"Restructuring" means changing system operation, management and/or ownership, including, but not limited to:

- (1) Mergers;
- (2) Voluntary transfer of ownership; or
- (3) Receivership (involuntary transfer of operation and/or ownership).

"Safe Drinking Water Act (SDWA)" means the Federal Safe Drinking Water Act, including all amendments.

"Satellite management agency (SMA)" means a person or entity that is approved by the department of health to own or operate public water systems on a regional or county-wide basis, without the necessity for a physical connection between such systems. SMA's are regulated under chapter 246-295 WAC.

"Set-aside" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities as authorized in Section 1452 of the SDWA, to fund new programs, and other drinking water program activities.

"Significant noncomplier (SNC)" means a water system that is violating or has violated department rules and the violations may create or have created an imminent or a significant risk to human health.

"Small water system management program (SWSMP)" means a small water system management program developed and approved under WAC 246-290-105.

"State environmental review process (SERP)" means the environmental review process conducted on all DWSRF projects that ensures compliance with state and federal environmental review through a National Environmental Policy Act (NEPA)-like process.

"State match" means funds equaling at least twenty percent of the amount of the federal capitalization grants the state must deposit into the DWSRF loan fund including the necessary match for set-asides.

"Surface water" means a body of water open to the atmosphere and subject to surface runoff.

"System capacity" means the system's operational, technical, managerial and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

"Transfer of ownership" means to convey ownership of a water system from one person or entity to another.

"Transient noncommunity system" means a Group A noncommunity water system that serves:

- (1) Twenty-five or more different people per day during sixty or more days per year;
- (2) Twenty-five or more of the same people per day for less than one hundred eighty days per year and during more than fifty-nine days per year; or
- (3) One thousand or more people for two or more consecutive days.

"Water facilities inventory form (WFI)" means the DOH form summarizing each public water system's characteristics.

"Water right" means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

"Water system plan (WSP)" means a water system plan developed and approved under WAC 246-290-100.

NEW SECTION

WAC 246-296-185 Implementation of Public Law 111-88 Making Appropriations for the Department of the Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010, and for Other Purposes. (1) Purpose and intent.

(a) The purpose of this section is to implement the requirements of Public Law (P.L.) 111-88 Making Appropriations for the Department of the Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010, and for Other Purposes.

(b) The DWSRF rules in this chapter apply to the federal fiscal year 2010 DWSRF funds except as otherwise provided in this section. If a conflict exists between the rules in this chapter and P.L. 111-88, P.L. 111-88 shall control.

(2) Provision of funds.

(a) Notwithstanding the requirements of section 1452(f) of the Safe Drinking Water Act, 42 U.S.C. Sec. 300j-12(f), the state will provide at least thirty percent of the amount of the 2010 federal grant to provide additional subsidization to eligible recipients in the form of forgiveness of principal.

(b) To the extent there are sufficient eligible applications, the state will provide at least twenty percent of the amount of the 2010 federal grant for green projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

(c) In addition to the prioritization criteria listed in WAC 246-296-130, DOH may consider the requirements in (a) or (b) of this subsection for additional subsidies or green projects when ranking project.

(d) In addition to the criteria identified in WAC 246-296-140, the board, in consultation with DOH, may consider the requirements in (a) or (b) of this subsection for additional subsidies or green projects in the final project selection.

(3) Qualification for principal forgiveness.

(a) If the water system is located in a disadvantaged community, a project may be awarded a loan with principal forgiveness for at least fifty percent of the loan amount.

(b) If the project does not fall under (a) of this subsection, and the water system is located in a distressed county, the project may be awarded a loan with principal forgiveness for at least thirty percent of the loan amount.

(c) If the project results in restructuring of a water system that involves a change of ownership prior to loan execution, the project may be awarded a loan with principal forgiveness for at least fifty percent of the loan amount.

(d) If the project does not fall under (a), (b), or (c) of this subsection, it may be awarded a low interest loan.

(4) Loan fee. A loan fee of one percent will be charged on all loans including those loans on which all, some or none of the principal is forgiven.

WSR 10-12-064

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 10-117—Filed May 27, 2010, 3:14 p.m., effective June 2, 2010, 12:01 a.m.]

Effective Date of Rule: June 2, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900I; 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 rule change is necessary to ensure a successful youth fishing event. The fish will be planted in the lake three days prior to the event to better acclimate them. On the day of the event, only juvenile anglers will be allowed to fish in the lake. 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: May 27, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Heart Lake (Skagit Co.) Notwithstanding the provisions of WAC 232-28-619, effective June 2 through June 5, 2010, it is unlawful to fish in those waters of Heart Lake, except open to fishing 6:00 a.m. to 1:00 p.m. June 5, 2010, to anglers participating in the youth fishing event. Juvenile anglers can continue to fish on June 5, 2010, after the youth fishing event closes.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 6, 2010:

WAC 232-28-61900I	Exceptions to statewide rules—Heart Lake (Skagit Co.)
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WSR 10-12-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-140—Filed May 28, 2010, 1:38 p.m., effective June 1, 2010]

Effective Date of Rule: June 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S and 232-28-62100H; and amending WAC 232-28-619 and 232-28-621.

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed to by resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans and are 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 2, Amended 0, Repealed 2.

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

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

Date Adopted: May 28, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—2010 North of Falcon. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following pro-

visions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Skykomish River (Snohomish County): Effective June 1 through June 25, 2010, a person may fish for and possess salmon in those waters of the Skykomish River from the mouth to the mouth of Wallace River: Daily limit 2 hatchery Chinook; minimum size 12 inches in length.

(2) Wishkah River (Grays Harbor County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor from the mouth to the mouth of the West Fork.

(b) The trout minimum size is eight inches in length in those waters from the weir at the Wishkah Rearing Ponds, upstream.

NEW SECTION

WAC 232-28-62100H Puget Sound salmon seasons—2010 North of Falcon. Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective immediately until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective June 1 through June 25, 2010, waters of Catch Record Card Area 8-2 are closed, except that waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point: Open from Friday through 11:59 Monday of each week, from June 4 through June 18 and June 20 through June 25, 2010. Daily limit of two salmon.

REPEALER

The following sections of the Washington Administrative Code are repealed effective June 26, 2010:

WAC 232-28-61900S	Exceptions to statewide rules—2010 North of Falcon
WAC 232-28-61900H	Puget Sound salmon seasons—2010 North of Falcon

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 section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 232-28-61900H is probably intended to be WAC 232-28-62100H.

WSR 10-12-069
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed May 28, 2010, 1:44 p.m., effective May 28, 2010, 1:44 p.m.]

Effective Date of Rule: Immediately.

Purpose: These amendments are necessary to meet the legislative requirements of sections 201 and 209 of the oper-

ating budget for fiscal years 2010 and 2011 for durable medical equipment. Specifically, the department is eliminating coverage for transcutaneous electrical neural stimulation (TENS) devices and supplies (including battery chargers and supplies for client-owned devices) for in-home use and the instruction in the application of TENS.

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-1150, 388-543-1300, 388-543-1600, 388-543-2800, 388-545-300, and 388-545-500.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 1109, chapter 564, Laws of 2009 (ESHB 1244), WAC 388-501-0055.

Under RCW 34.05.350 the agency for good cause finds 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: Emergency rule adoption is required in order for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for durable medical equipment for fiscal years 2010-2011. The permanent rule is expected to be adopted in early June 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 6, 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 6, Repealed 0.

Date Adopted: May 28, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-13 issue of the Register.

WSR 10-12-070
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-141—Filed May 28, 2010, 3:09 p.m., effective June 4, 2010]

Effective Date of Rule: June 4, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900A; 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 rule change is necessary to ensure a safe and successful fishing kids event. The fish will be planted one day prior to the event to better acclimate them before the event. Several thousand fish will be placed into netted areas along the shoreline. On the day of the event, preregistered kids will be allowed to fish within these netted areas. The reason for keeping the pond closed for four hours after the event is to ensure the safety of the public as well as the event participants while the event is shutting down and the 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: May 28, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—Lake Sacajawea (Cowlitz Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. June 4, through 7:00 p.m. June 5, 2010, it is unlawful to fish from Martin's Dock or within 600 feet on either side of the dock, except that this area is open to participants in the Fishing Kid's event, 8:00 a.m. to 3:00 p.m. on June 5, 2010.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. June 5, 2010:

WAC 232-28-61900A Exceptions to statewide rules—Lake Sacajawea (Cowlitz Co.)

WSR 10-12-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-142—Filed May 28, 2010, 3:18 p.m., effective June 1, 2010, 7:00 a.m.]

Effective Date of Rule: June 1, 2010, 7:00 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-56-32500S; and amending WAC 220-56-325.

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 needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp. 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: May 28, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 220-56-32500T Shrimp—Areas and seasons.
 Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 7 and 13, except as provided for in this section;

a. Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary;

i. Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.
 ii. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

2) Marine Area 13 is open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed

3) Effective immediately until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 a.m. June 1, 2010:

WAC 220-56-32500S Shrimp—Areas and seasons
 (10-119)

WSR 10-12-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-145—Filed May 28, 2010, 3:30 p.m., effective June 1, 2010]

Effective Date of Rule: June 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900G; 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: Agency intent was to open the Little Naches River on the first Saturday in June under the new statewide river/stream season. Due to an oversight, the new 2010-11 pamphlet retained the old June 1 opening date. This emergency rule corrects the discrepancy between the pamphlet and the Washington Administrative Code. 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: May 28, 2010.

Philip Anderson
Director

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: June 1, 2010.

Walt Fahrer
Rules Coordinator

NEW SECTION

WAC 232-28-61900G Exceptions to statewide rules—Little Naches River (Yakima Co.) Notwithstanding the provisions of WAC 232-28-619, effective June 1 through June 4, 2010, a person may fish in waters of the Little Naches River.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 5, 2010:

WAC 232-28-61900G Exceptions to statewide rules—Little Naches River.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-775 Real estate fees. These fees are applicable to all original licenses, examination services, and fee generating services issued or performed after July 1, 2010, and all renewals for existing licenses with expiration date after July 1, 2010. The fees for an original license and renewal include a ten dollar fee which is assessed for the real estate research center for the real estate broker and the real estate managing broker licenses. The following fees shall be charged by the department of licensing:

Table with 2 columns: Title of Fee, Fee. Lists fees for Real estate broker, Real estate managing broker, and Real estate firm and assumed name license.

WSR 10-12-085

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed June 1, 2010, 9:37 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: To correct error in the firm/assumed name fee from \$210.00 to \$200.00 and correct the subsequent fingerprint processing fee.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 308-124A-775].

Statutory Authority for Adoption: RCW 18.85.041, 18.85.061.

Other Authority: RCW 18.85.451.

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

Reasons for this Finding: RCW 18.85.451 is effective July 1, 2010. The law does not allow for the collection of \$10.00 fee for real estate firms. Thus the fee needs to be lowered from \$210.00 to \$200.00. The state patrol/FBI changed the fee for fingerprinting on subsequent attempts.

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

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

Title of Fee	Fee
Late renewal with penalty	((236.50)) <u>226.50</u>
Name or address change	0.00
Duplicate license	26.50
Certification	26.50
Real estate branch:	
Original license	\$189.50
License renewal	189.50
Late renewal with penalty	216.50
Certification	26.50
Duplicate license	26.50
Name or address change, transfer or license activation	0.00
Fingerprint processing	\$35.25
<u>Subsequent fingerprint processing</u>	<u>\$30.00</u>

Fingerprints rejected by the department, Washington state patrol or FBI will necessitate subsequent fingerprint processing fees.

Fingerprinting fee does not include the cost of obtaining prints. Applicants will be responsible for obtaining their fingerprints for their cards.

WSR 10-12-111

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed June 2, 2010, 9:35 a.m., effective June 30, 2010]

Effective Date of Rule: June 30, 2010.

Purpose: Adoption of new WAC 390-05-196 to clarify the difference between bona fide political parties and other political committees for the purpose of contribution limitations following the United States Supreme Court ruling upholding Washington's top two primary system.

Statutory Authority for Adoption: RCW 42.17.370.

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

Reasons for this Finding: In March of 2008, the United States supreme court upheld Washington's top two primary system which voters enacted by approving I-872 in 2004. Under the new primary system, chapter 29A.20 RCW which has been relied on to distinguish bona fide political parties from other political committees has been effectively repealed. Section 101, chapter 204, Laws of 2010 (effective January 1, 2012) amends chapter 42.17 RCW to remove the reference to chapter 29A.20 RCW and confirm the secretary of state's ability to recognize minor political parties. To preserve the general welfare and given the timing restriction for rule making in RCW 42.17.370(1), the new rule is needed for the 2010 election season to clarify which minor party organi-

zations satisfy the definition of bona fide political party in RCW 42.17.020.

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 1, Amended 0, Repealed 0.

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

Date Adopted: May 27, 2010.

Lori Anderson
Communications and
Training Officer

NEW SECTION

WAC 390-05-196 Bona fide political party—Application of term. An organization that filed a valid certificate of nomination with the secretary of state or a county elections official under chapter 29A.20 RCW in any year from 2002 through 2007, and any organization that is otherwise recognized by the secretary of state as a minor political party after 2007, is deemed to have satisfied the definition of bona fide political party in RCW 42.17.020.

WSR 10-12-112

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed June 2, 2010, 9:36 a.m., effective June 30, 2010]

Effective Date of Rule: June 30, 2010.

Purpose: Amending WAC 390-17-060 to clarify which expenditures qualify as exempt from contribution limits.

Citation of Existing Rules Affected by this Order: Amending WAC 390-17-060.

Statutory Authority for Adoption: RCW 42.17.370.

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: To implement section 602, chapter 204, Laws of 2010 (effective March 25, 2010). Given the rule-making instruction and timing restriction in RCW 42.17.370(1) and in order to preserve the general welfare for the 2010 election season, WAC 390-17-060 needs to be amended to clarify which expenditures are exempt from contribution limits under the newly amended statute.

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 1, 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: May 27, 2010.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 07-07-005, filed 3/8/07, effective 4/8/07)

WAC 390-17-060 Exempt activities—Definitions, reporting. (1)(a) "Exempt contributions" are contributions made to a political committee which are earmarked for exempt activities as described in RCW 42.17.640. Such contributions are required to be reported under RCW 42.17.090, are subject to the restrictions in RCW 42.17.105(8), but are not subject to the contribution limits in RCW 42.17.640. Any written solicitation for exempt contributions must be so designated. Suggested designations are "not for individual candidates" or "for exempt activities."

(b) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for voter registration, absentee ballot information, get-out-the-vote campaigns, sample ballots are presumed to be for the purpose of promoting individual candidates and are subject to the contribution limits in RCW 42.17.640.

(c) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for internal organization expenditures or fund-raising are presumed to be with direct association with individual candidates and are subject to the contribution limits in RCW 42.17.640.

(2) "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited and out of which only expenditures for exempt activities shall be made.

(3) "Exempt activities" are those activities referenced in RCW 42.17.640 as further clarified by subsections (4), (5), and ~~(6), (7), and (8))~~ of this section. Only exempt activities are eligible for payment with exempt contributions.

~~(4)(a) ((Except as permitted by WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.~~

~~(b) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.~~

~~(5))~~ Activities referenced in RCW 42.17.640 (15)(a) that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message. Expenditures or contributions for electioneering communications made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent do not qualify as exempt activities, under WAC 390-05-210.

(b) Except as permitted under WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 (15)(a) that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.

(c) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.

~~((6))~~ (5)(a) "Internal organization expenditures" referenced in RCW 42.17.640 (15)(b) are expenditures for organization purposes, including legal and accounting services, rental and purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organization's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.

(b) "Fund-raising expenditures" referenced in RCW 42.17.640 (15)(b) are expenditures for fund-raising purposes, including facilities for fund-raisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to subsections (a) and (b) above are made in direct association with individual candidates, they shall not be paid with exempt contributions.

~~((7))~~ (6) For purposes of RCW 42.17.640 and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.

WSR 10-12-113

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed June 2, 2010, 9:37 a.m., effective June 30, 2010]

Effective Date of Rule: June 30, 2010.

Purpose: Amend WAC 390-05-275 to reference new WAC 390-05-196, when defining party organization.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-275.

Statutory Authority for Adoption: RCW 42.17.370.

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: Given the rule-making instruction and timing restriction in RCW 42.17.370(1) and in order to preserve the general welfare for the 2010 election season, WAC 390-05-275 needs to be amended to clarify which organizations satisfy the definition of bona fide political party under RCW 42.17.020 and until amendments to chapter 42.17 RCW, in section 101, chapter 204, Laws of 2010 (effective January 1, 2012) become effective, and to reflect the definition will be approved through new emergency WAC 390-05-196 Bona fide political party—Application of term. These emergency rules are a result of the March 2008 United States Supreme Court decision upholding Washington state's top two primary system which was enacted by voters with their approval of I-872 in 2004.

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 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: May 27, 2010.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 07-08-044, filed 3/28/07, effective 4/28/07)

WAC 390-05-275 Definition—Party organization. "Party organization," as that term is used in chapter 42.17 RCW and Title 390 WAC, means a bona fide political party as defined in RCW 42.17.020 and applied in WAC 390-05-196.

WSR 10-12-114

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed June 2, 2010, 9:38 a.m., effective June 30, 2010]

Effective Date of Rule: June 30, 2010.

Purpose: Adoption of new WAC 390-05-274 to clarify the term "party affiliation" and reference to "party," "political party," and similar terms in Title 390 WAC.

Statutory Authority for Adoption: RCW 42.17.370.

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

Reasons for this Finding: In March of 2008, the United States supreme court upheld Washington's top two primary system which voters enacted by approving I-872 in 2004. Under the new primary system, chapter 29A.20 RCW which has been relied on to distinguish bona fide political parties from other political committees has been effectively repealed. Section 101, chapter 204, Laws of 2010 (effective January 1, 2012) amends chapter 42.17 RCW to remove the reference to chapter 29A.20 RCW and confirm the secretary of state's ability to recognize minor political parties. To preserve the general welfare and given the timing restriction for rule making in RCW 42.17.370(1), the new rule is needed for the 2010 election season to clarify the term "party affiliation" found in two sections of chapter 42.17 RCW and Title 390 WAC.

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 1, Amended 0, Repealed 0.

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

Date Adopted: May 27, 2010.

Lori Anderson
Communications and
Training Officer

NEW SECTION

WAC 390-05-274 Party affiliation, party preference, etc. (1) "Party affiliation" as that term is used in chapter 42.17 RCW and Title 390 WAC means the candidate's party preference as expressed on his or her declaration of candidacy. A candidate's preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate.

(2) A reference to "political party affiliation," "political party," or "party" on disclosure forms adopted by the commission and in Title 390 WAC refers to the candidate's self-identified party preference.

WSR 10-12-115
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed June 2, 2010, 9:43 a.m., effective June 2, 2010, 9:43 a.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply.

WAC 458-20-19401 Minimum nexus thresholds for apportionable activities, Washington's business and occupation (B&O) taxes may be imposed only if a business has substantial nexus with this state. This rule explains the minimum nexus thresholds for the B&O taxation of businesses engaged in apportionable activities.

WAC 458-20-19402 Single factor receipts apportionment—Generally, this rule explains how gross income earned by businesses engaged in apportionable activities is apportioned. This rule does not apply to the apportionment of income of financial institutions taxable under RCW 82.04.290, which is addressed in WAC 458-20-19404, nor that of royalty income earned from granting the right to use intangible property, which is addressed in WAC 458-20-19403.

WAC 458-20-19403 Single factor receipts apportionment—Royalties, this rule addresses how gross income from royalties is apportioned when the business receives royalty payments from both within and outside the state.

WAC 458-20-19404 Financial institutions—Income apportionment, this rule addresses how gross income from engaging in business as a financial institution is apportioned when the financial institution engages in business both within and outside the state.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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: An emergency adoption of these rules is necessary because permanent rules cannot be adopted at this time.

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 [4], Amended 4 [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 [4], Amended 4 [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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 2, 2010.

Alan R. Lynn
 Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-13 issue of the Register.

WSR 10-12-117
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed June 2, 2010, 9:46 a.m., effective June 2, 2010, 9:46 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 458-20-194 (Rule 194) explains the apportionment requirements of persons entitled to apportion income under RCW 82.04.460(1). It also describes Washington nexus standards for business activities subject to apportionment under RCW 82.04.460(1). Rule 194 applies to persons subject to the service and other activities, international investment income, licensed boarding home, and low-level radioactive waste disposal business and occupation (B&O) tax classifications, and who are not required to apportion their income under another statute or rule.

WAC 458-20-14601 provides tax reporting instructions for financial institutions doing business both inside and outside the state of Washington.

Chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus provisions addressed in these rules, effective June 1, 2010. The department is amending these rules to recognize that the guidance provided in the rules does not apply after May 31, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-194 Doing business inside and outside the state and 458-20-14601 Financial institutions—Income apportionment.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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: An emergency adoption of these rules is necessary because permanent rules cannot be adopted at this time.

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 2, 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: June 2, 2010.

Alan R. Lynn
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-13 issue of the Register.