

**WSR 10-09-023**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-78—Filed April 13, 2010, 11:11 a.m., effective April 13, 2010, 11:11 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
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 North Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule opens the Regions 1 and 3 beam trawl fishery season. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: April 13, 2010.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-52-05100B Puget Sound shrimp 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 beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) will open at 7:00 a.m. April 16, 2010, 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 east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait will open at 7:00 a.m. May 1, 2010, until further notice.

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

**WSR 10-09-027**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-77—Filed April 13, 2010, 2:05 p.m., effective April 16, 2010, 12:01 a.m.]

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

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-56-36000F; and amending WAC 220-56-360.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 13, 2010.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-56-26000F Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it

is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 a.m. April 16, 2010 through 11:59 a.m. April 18, 2010, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. only.

2. Effective 12:01 a.m. April 17, 2010 through 11:59 a.m. April 18, 2010, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 a.m. to 11:59 a.m. only.

3. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-56-26000F is probably intended to be WAC 220-56-36000F.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 18, 2010:

WAC 220-56-36000F      Razor clams—Areas and seasons.

**WSR 10-09-028  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-80—Filed April 13, 2010, 2:11 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: 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: This rule conforms to federal action taken by the Pacific Fisheries Management Council. The recreational halibut quota is sufficient to provide for these seasons. 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: April 13, 2010.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-56-25500V 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 May 1, 2010 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** - Open May 2, 2010 until further notice, Sundays and Tuesdays only, except closed Tuesday May 25, 2010; see (i) and (ii) below for additional details.

(i) **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 May 2, 2010, 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  
47°58.00 N. lat, 124°24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open May 13 through May 22, 2010, Thursdays and Saturdays 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 1 through May 22, 2010, Thursdays through Saturdays only. 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.

**WSR 10-09-029**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-70—Filed April 13, 2010, 2:19 p.m., effective April 16, 2010, 8:00 a.m.]

Effective Date of Rule: April 16, 2010, 8:00 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900X; 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: The United States Army Corps of Engineers has coordinated with many partners to provide a fishing event for kids from several elementary classrooms in the Tri-Cities. Closing Hood Park Pond before the event will eliminate premature harvest of catchable-sized trout dedicated to the youth fishing event. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 13, 2010.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900X Exceptions to statewide rules—Hood Park Pond.** Notwithstanding the provisions of WAC 232-28-610, effective 8:00 a.m. April 16 through 1:00 p.m. April 17, 2010, it is unlawful to fish in waters of Hood Park Pond, except open to juvenile anglers.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 1:00 p.m. April 17, 2010:

WAC 232-28-61900X      Exceptions to statewide rules—Hood Park Pond.

**WSR 10-09-031**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-75—Filed April 13, 2010, 2:56 p.m., effective April 20, 2010]

Effective Date of Rule: April 20, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S; 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: The predicted 470,000 upriver spring chinook return allows for expanded fishing opportunities in the Snake River within Washington. Expectations are for nearly 200,000 hatchery chinook to return to the Snake River. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 13, 2010.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900S Exceptions to statewide rules—Snake River.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective April 20 through June 30, 2010, a person may fish for and possess salmon in waters of the Snake River from the South Bound Highway 12 Bridge, upstream about 7 miles to the fishing restriction boundary approximately 400 ft. below Ice Harbor Dam. Daily limit of two adult hatchery Chinook, plus four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species.

(d) Night closure is in effect.

(2) Effective April 24, through June 30, 2010, a person may fish for and possess salmon in the following waters of the Snake River:

(a) From the Railroad Bridge, about 0.5 miles downstream of the Tucannon River mouth, up about 9 miles to the Army Corps of Engineers boat launch (approximately 1 mile upstream of Little Goose Dam along the south shore). This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the Wall" in front of the juvenile collection facility).

(b) From Casey Creek upstream about 6 miles to the fishing restriction area below Lower Granite Dam.

(c) From Blyton Landing Boat Launch along the Snake River Road in Whitman County (about 12 miles upstream of Lower Granite Dam), upstream about 19 miles to the boat dock behind the Quality Inn in Clarkston (boundary line is from the white sign for Hells Canyon Tours approximately 100 ft upstream of the boat dock that has the small green roofed shed on the south shore) across to the culvert with tanks and trailers on the north shore.

(i) Daily limit of two adult hatchery Chinook and four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(ii) However, when fishing along the "wall" and walkway area upstream of the juvenile fish bypass return pipe below Little Goose Dam, the daily limit is one adult hatchery Chinook and one jack salmon. May continue to fish until the daily adult limit is retained. Minimum size for Chinook is 12 inches in length.

(iii) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(iv) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(v) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species.

(vi) Night closure is in effect.

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

#### REPEALER

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

WAC 232-28-61900S Exceptions to statewide rules—Snake River.

#### **WSR 10-09-038 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 10-82—Filed April 14, 2010, 1:52 p.m., effective April 29, 2010, 12:01 a.m.]

Effective Date of Rule: April 29, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900H; 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 assure a successful kids fish-in event. Twenty-five hundred trout will be stocked on April 29, 2010, to acclimate so they bite better for the kids during the event. On May 1, 2010, registered kids will be allowed to fish during the event. The pond will reopen to the public at 4:00 p.m. on May 1, 2010. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 14, 2010.

Lori Preuss  
for Philip Anderson  
Director

### NEW SECTION

**WAC 232-28-61900H Exceptions to statewide rules—Columbia Park Pond (Benton Co.)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 29, 2010 through 4:00 p.m. May 1, 2010, it is unlawful to fish in those waters of Columbia Park Pond, except that juveniles participating in the Kids Fish-In event may fish from 8:00 a.m. to 4:00 p.m. on May 1, 2009.

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. May 1, 2010:

WAC 232-28-61900H Exceptions to statewide rules—Columbia Park Pond.

**WSR 10-09-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-83—Filed April 14, 2010, 2:07 p.m., effective April 14, 2010, 2:07 p.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:** Repealing WAC 232-28-61900W; and 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:** Extends the sturgeon spawning sanctuary in area to provide increased protection to adult sturgeon. Rule is consistent with Washington department of fish and wildlife's compact hearing action of February 18, 2010. 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 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 14, 2010.

Lori Preuss  
for Philip Anderson  
Director

### NEW SECTION

**WAC 232-28-61900I Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam.

(2) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.

(3) Effective May 1 until further notice, it is unlawful to fish for or possess sturgeon in those waters of the Columbia River upstream from a line crossing the Columbia from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to a boundary marker on the Washington shore.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900W Exceptions to statewide rules—Columbia River sturgeon. (10-39)

**WSR 10-09-042**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-81—Filed April 14, 2010, 4:16 p.m., effective April 30, 2010, 12:01 a.m.]

Effective Date of Rule: April 30, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900B; 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 event. The fish will be planted one day prior to the event to better acclimate them before the event. Fish will be placed into a netted area along the shoreline of the pond. On the day of the event, participants will be allowed to fish within these netted areas. Keeping the pond closed until May 2, 2010, is to ensure the safety of the public as well as the event participants while the event is shutting down and equipment and nets are being removed. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 14, 2010.

Lori Preuss  
for Philip Anderson  
Director

**NEW SECTION**

**WAC 232-28-61900B Exceptions to statewide rules—Kliline Pond.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 30 through 12:01 a.m. May 2, 2010, it is unlawful to fish in those waters of Kliline Pond, except as provided in this section:

(a) Open to fishing 8:00 a.m. to 1:30 p.m. May 1, 2010, in the netted area, for participants in the Hooked on Fishing event.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. May 2, 2010:

WAC 232-28-61900B      Exceptions to statewide rules—Kliline Pond.

**WSR 10-09-064**

**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 19, 2010, 10:27 a.m., effective April 19, 2010, 10:27 a.m.]

Effective Date of Rule: Immediately.

Purpose: Add a new section for rules regarding provision of state funding for juvenile students in adult jails.

Citation of Existing Rules Affected by this Order: Amending WAC 392-122-205; and new section WAC 392-122-228.

Statutory Authority for Adoption: RCW 28A.150.290.

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: The 2010 legislature passed bill [2SSB] 6702 which provides public education for juvenile students in adult jails. This rule change provides procedures and processes for the implementation of this law.

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 1, Repealed 0.

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

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

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

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

Date Adopted: April 19, 2010.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 07-23-023, filed 11/9/07, effective 12/10/07)

**WAC 392-122-205 State institutional education program—Eligible programs.** Programs supported as state institutional education programs include those provided in:

(1) State operated group homes—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services to house adjudicated youth twenty-four hours a day;

(2) Juvenile detention centers—i.e., facilities meeting the definition of a "detention facility" in RCW 13.40.020.

(3) Institutions for juvenile delinquents—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services for the diagnosis, confinement and rehabilitation of juveniles committed by the courts.

(4) Residential habilitation centers—i.e., facilities maintained by the division of developmental disabilities of the department of social and health services for care and treatment of persons with exceptional needs by reason of mental and/or physical deficiency.

Programs providing educational services to youth in a residential rehabilitation center may include services provided at facilities controlled and operated by the school district providing those services.

(5) Adult jails and correctional facilities housing juveniles—i.e., facilities maintained by the state department of corrections for juvenile inmates under eighteen years of age.

NEW SECTION

**WAC 392-122-228 Alternative learning experiences for juvenile students incarcerated in adult jail facilities.**

(1) A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may make use of digital and/or on-line curricula, and may be delivered over the internet or using other electronic means. A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may also include participation by students and parents in the design and implementation of a student's learning experience. This section provides an alternative method of determining full-time equivalent enrollment and claiming state funding for public school learning experiences that are:

(a) Individual courses of study for juvenile students incarcerated in adult jail facilities. "Adult jail facility" means any jail operated under the authority of chapter 70.48 RCW;

(b) Supervised, monitored, assessed, and evaluated by school staff. As used in this section, "school staff" means certificated instructional staff of the school district according to the provisions of chapter 181-82 WAC, or a contractor pursuant to WAC 392-121-188;

(c) Provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences; and

(d) Provided in whole or part, outside the regular classroom setting, including those learning experiences provided digitally via the internet or other electronic means.

This section sets forth the standards, procedures, and requirements for state funded alternative learning experiences for juvenile students incarcerated in adult jail facilities. This section is not intended to prevent or limit alternative education programs provided by a school district with federal or local resources.

An alternative learning experience for a juvenile student incarcerated in adult jail facilities may be counted as a course of study pursuant to WAC 392-121-107 if the following requirements are met:

(2) School district board policies for alternative learning experiences: The board of directors of a school district claiming state funding for alternative learning experiences for juvenile students incarcerated in adult jail facilities shall adopt and annually review written policies for each alternative learning experience program and program provider that:

(a) Require a written plan for each student participating in an alternative learning experience for juvenile students incarcerated in adult jail facilities that meets the minimum criteria pursuant to subsection (4) of this section;

(b) Describe how student performance will be supervised, monitored, assessed, evaluated, and recorded by school staff. Such description shall include methods for periodic grade reporting, if different from existing school district policy;

(c) Require each juvenile student who is incarcerated in an adult jail facility and enrolled in an alternative learning experience to have direct personal contact with school staff at least weekly, until the student completes the course objectives or the requirements of the learning plan. Such direct personal contact must be for a period not less than thirty minutes per week. Direct personal contact shall be for the purposes of instruction, review of assignments, testing, reporting of student progress, or other learning activities. Direct personal contact means a face-to-face meeting with the student;

(d) Require that each student's educational progress be reviewed at least monthly and that the results of each review be communicated to the student;

(e) Designate one or more school district official(s) responsible for approving specific alternative learning experience programs or courses, monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(i) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(ii) A description of how certificated and classified staff are assigned program management and instructional responsibilities that maximize student learning, including the ratio of certificated instructional staff to full-time equivalent students;

(iii) A description of how a written student learning plan pursuant to subsection (4) of this section, is developed, and student performance supervised and evaluated, by certificated staff;

(iv) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(v) Results of any self-evaluations conducted pursuant to subsection (7) of this section;

(f) Satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies (chapter 392-410 WAC); and

(g) For alternative learning experience courses offering credit, or for alternative learning experience programs issuing a high school diploma, satisfy the state board of education's high school graduation requirements (chapter 180-51 WAC).

(3) Alternative learning experience implementation standards:

(a) Alternative learning experiences shall be accessible to all juveniles incarcerated in adult jail facilities, including those with disabilities. Alternative learning experiences for special education students shall be provided in accordance with chapter 392-172A WAC.

(b) It is the responsibility of the school district or school district contractor to ensure that enrolled juvenile students incarcerated in adult jail facilities have all curricula, course content, instructional materials, and other learning resources essential to successfully complete the requirements of the written student learning plan.

(c) Contracting for alternative learning experiences shall be subject to the provisions of WAC 392-121-188 and RCW 28A.150.305.

(d) The school district shall institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(4) Written student learning plan: Each juvenile student incarcerated in an adult jail facility who is enrolled in an alternative learning experience course of study shall have a written student learning plan designed to meet the student's individual educational needs. The written student learning plan may be developed in partnership with the student, with recognition that school staff has the primary responsibility and accountability for the plan, including supervision and monitoring, and evaluation and assessment of the student's progress. The written student learning plan shall include, but not be limited to, the following elements:

(a) A beginning and ending date for the learning experience;

(b) An estimate of the average number of hours per week that the student will engage in learning activities to meet the requirements of the student learning plan. This estimate may be used in reporting enrollment in compliance with subsection (5) of this section and must be based upon the criteria in subsection (6) of this section;

(c) A description of how weekly contact requirements will be fulfilled;

(d) A description of the specific learning goals and performance objectives of the alternative learning experience. This requirement may be met through the use of course syllabi or other similarly detailed descriptions of learning requirements. The description shall clearly identify the requirements a student must meet to successfully complete the course or program;

(e) Identification of instructional materials essential to successful completion of the learning plan; and

(f) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan.

The written student learning plan shall identify whether the alternative learning experience meets one or more of the state essential academic learning requirements or any other academic goals, objectives, and learning requirements defined by the school district. For a high school alternative learning experience, the plan shall specify whether the experience meets state and district graduation requirements.

(5) Enrollment reporting: Effective the 2009-10 school year, the full-time equivalency of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experience programs shall be determined as follows:

(a) Using the definition of full-time equivalent student in WAC 392-121-122(1) and the estimated average weekly hours of learning activity described in the written student learning plan on the first enrollment count date on or after the start date specified in the written student learning plan; and

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with school staff for ten consecutive school days. Any such student shall not be counted as an enrolled student until the student has met with appropriate school staff and resumed participation in his or her alternative learning experience or participated in another course of study as defined in WAC 392-121-107.

(6) Accountability for student performance:

(a) At minimum, juvenile students incarcerated in adult jails who are enrolled in alternative learning experiences shall have their educational performance evaluated according to the following process and schedule:

(i) Each student's educational progress shall be reviewed at least once per month. The progress review shall be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress review shall be conducted by school staff and shall include direct personal contact with the student. The results of the review shall be communicated to the student.

(iii) Based on the progress review, school staff shall determine and document whether the student is making satisfactory progress in completing the learning activities and reaching the learning goals and performance objectives defined in the written plan.

(iv) If the student fails to make satisfactory progress for no more than two consecutive evaluation periods or if the student fails to follow the written student learning plan, an intervention plan designed to improve student progress shall be developed and implemented. This intervention plan shall be developed by school staff in conjunction with the student.

(v) If, after no more than three subsequent evaluation periods, the student still is not making satisfactory progress, a plan designed to more appropriately meet the student's educational need shall be developed and implemented by school staff.



(b) The educational progress of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experiences shall be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district.

(7) Program evaluation: School districts offering alternative learning experiences to juvenile students incarcerated in adult jail facilities shall engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation shall follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

(8) Annual reporting: Each school district offering alternative learning experiences shall report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section, including student headcount and full-time equivalent enrollment claimed for basic education funding. The report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs. The report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(9) Documentation: In accordance with required records retention schedules, a school district claiming state funding for alternative learning experiences shall maintain the following written documentation available for audit:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (2)(g) of this section;

(c) Annual reports to the superintendent of public instruction as required by subsection (8) of this section;

(d) The written student learning plans required by subsection (4) of this section, including documentation of required weekly direct personal contact;

(e) Student progress reviews, evaluations, and assessments required by subsection (6) of this section; and

(f) Student enrollment detail substantiating full-time equivalent enrollment reported to the state, including estimated total hours of participation in educational activities, and any actual documentation of hours of learning for those students failing to make satisfactory progress.

### WSR 10-09-075

#### EMERGENCY RULES

#### DEPARTMENT OF ECOLOGY

[Order 10-01—Filed April 19, 2010, 3:36 p.m., effective April 19, 2010]

Effective Date of Rule: April 19, 2010.

Purpose: This rule will amend chapter 173-98 WAC, Use and limitations of the water pollution control revolving fund. These amendments will address provisions (e.g. green infrastructure or forgivable principal) in the new 2010 clean water state revolving fund federal appropriation which affect

how the agency can distribute funding to local jurisdictions for water pollution control project[s].

Citation of Existing Rules Affected by this Order: Amending chapter 173-98 WAC.

Statutory Authority for Adoption: RCW 90.48.035.

Other Authority: Chapters 90.50A, 34.05 RCW, RCW 43.21.080.

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

Reasons for this Finding: Emergency adoption is necessary to comply with provisions of the 2010 clean water state revolving fund federal appropriation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 9, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 19, 2010.

Ted Sturdevant  
Director

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-030 Definitions.** For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities** see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

((7)) (8) **Commercial, industrial, and institutional flows** means the portion of the total flows to a facility that originate from commercial establishments, industrial facili-

ties, or institutional sources such as schools, hospitals, and prisons.

~~((8))~~ **(9) Competitive funding** means moneys available for projects through a statewide evaluation process.

~~((9))~~ **(10) Completion date or expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

~~((10))~~ **(11) Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

~~((11))~~ **(12) Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

~~((12))~~ **(13) Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

~~((13))~~ **(14) Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

~~((14))~~ **(15) Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

~~((15))~~ **(16) Department** means the Washington state department of ecology.

~~((16))~~ **(17) Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

~~((17))~~ **(18) Director** means the director of the Washington state department of ecology or his or her authorized designee.

~~((18))~~ **(19) Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

~~((19))~~ **(20) Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

~~((20))~~ **(21) Effective date** means the date the loan agreement is signed by the department's water quality program manager.

~~((21))~~ **(22) Eligible cost** means the portion of the facilities or activities project that can be funded.

~~((22))~~ **(23) Energy efficiency projects** means the use of improved technologies and practices to reduce the energy consumption of water quality projects as defined by the Environmental Protection Agency (EPA) under Green Project Reserve.

**(24) Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

~~((23))~~ **(25) Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((24))~~ **(26) Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((25))~~ **(27) Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((26))~~ **(28) Environmentally innovative projects** means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

**(29) Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((27))~~ **(30) Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((28))~~ **(31) Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((29))~~ **(32) Facilities** see water pollution control facility.

~~((30))~~ **(33) Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((31))~~ **Federal capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

~~((32))~~ **(34) Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

~~((33))~~ **(35) Force account** means loan project work performed using labor, materials, or equipment of a public body.

~~((34))~~ **(36) Forgivable principal** means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

**(37) Funding category** see "water pollution control activities funding category" and "water pollution control facilities funding category."

~~((35))~~ **(38) Funding cycle** means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

~~((36))~~ **(39) General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

~~((37))~~ **(40) Green infrastructure projects** means a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology.

**(41) Green project reserves** means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

**(42) Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((38))~~ **(43) Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

~~((39))~~ **(44) Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((40))~~ **(45) Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

~~((41))~~ **(46) Intended use plan (IUP)** means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

~~((42))~~ **(47) Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((43))~~ **(48) Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((44))~~ **(49) Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((45))~~ **(50) Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution

includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((46))~~ **(51) Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

~~((47))~~ **(52) Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((48))~~ **(53) Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

~~((49))~~ **(54) Principal forgiveness** means a loan made by the department using the water pollution control revolving fund under which some or all of the principal may be forgiven by the department, if allowable by Congress through federal appropriation.

**(55) Project** means a water quality improvement effort funded with a grant or loan.

~~((50))~~ **(56) Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ **(57) Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ **(58) Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ **(59) Recipient** means a public body that has an effective loan agreement with the department.

~~((54))~~ **(60) Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

~~((55))~~ **(61) Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((56))~~ **(62) Revolving fund** means the water pollution control revolving fund.

~~((57))~~ **(63) Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((58))~~ **(64) Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((59))~~ **(65) Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and

superior to the claim or lien of the loan, subject only to maintenance and operation expense.

~~((60))~~ **(66) Service area population** means the number of people served in the area of the project.

~~((61))~~ **(67) Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((62))~~ **(68) Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

~~((63))~~ **(69) Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((64))~~ **(70) State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((65))~~ **(71) Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((66))~~ **(72) Total project cost** means the sum of all expenses associated with a water quality project.

~~((67))~~ **(73) Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water.

**(74) Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((68))~~ **(75) Water pollution control activities or activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((69))~~ **(76) Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

~~((70))~~ **(77) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((71))~~ **(78) Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

~~((72))~~ **(79) Water pollution control revolving fund (revolving fund)** means the water pollution control revolving fund established by RCW 90.50A.020.

~~((73))~~ **(80) Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

**AMENDATORY SECTION** (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-040 Water pollution control revolving fund (revolving fund) uses.** The revolving fund may be used for the following purposes:

- (1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;
- (2) To provide loans for nonpoint source pollution control management projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plan under section 320 of the act;
- (3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;
- (4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;
- (5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;
- (6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and
- (7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.
- (8) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387 as defined by the EPA and allowable by Congress through federal appropriation bills.

**AMENDATORY SECTION** (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-100 Eligible.** Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance:

- (1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;
- (2) **BMP implementation** on private property:
  - (a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations (CAFO)** water pollution control projects located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists,** assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning,** including wastewater elements of capital facilities planning under the growth management act;

(ii) **Storm water planning;**

(iii) **Facilities planning** for water pollution control facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction of:**

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site septic systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site septic systems;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts.

(14) **Green project reserves** such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as outlined in WAC 173-98-125 and as defined by EPA guidance, and allowed by Congress in federal appropriation bills.

(15) **Ground water protection activities** such as well-head protection and critical aquifer recharge area protection;

~~((15))~~ (16) **Hardship assistance** for wastewater treatment facilities construction, storm water, and on-site septic system repair and replacement;

~~((16))~~ (17) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

~~((17))~~ (18) **Lake implementation and associated planning activities** on lakes with public access;

~~((18))~~ (19) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

~~((19))~~ (20) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the SERP;

~~((20))~~ (21) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((21))~~ (22) **Light refreshments** for meetings when preapproved by the department;

~~((22))~~ (23) **Monitoring BMP effectiveness;**

~~((23))~~ (24) **Monitoring equipment** used for water quality assessment;

~~((24))~~ (25) **Monitoring water quality;**

~~((25))~~ (26) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((26))~~ (27) **On-site septic systems:**

(a) **On-site septic system repair and replacement** for residential and small commercial systems;

(b) **On-site wastewater** system surveys;

(c) **Local loan fund** program development and implementation;

~~((27))~~ (28) **Planning** comprehensive basin, watershed, and area-wide water quality development;

~~((28))~~ (29) **Refinancing** of water pollution control facility debt;

~~((29))~~ (30) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

~~((30))~~ (31) **Sales tax;**

~~((31))~~ (32) **Spare parts** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

~~((32))~~ (33) **Stream restoration projects;**

~~((33))~~ (34) **Total maximum daily load study** development and implementation;

~~((34))~~ (35) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

~~((35))~~ (36) **Transferring ownership** of a small wastewater system to a public body;

~~((36))~~ (37) **Wastewater or storm water utility development;**

~~((37))~~ (38) **Wastewater or storm water utility rate or development impact fee studies;**

~~((38))~~ (39) **Water quality education** and stewardship programs.

NEW SECTION

**WAC 173-98-125 Green project reserves projects.**

When considering eligibility of green project reserves, the department will consider guidance documents provided by the EPA as well as the provisions provided in subsections (1) through (4) of this section.

(1) **Water efficiency.** Water efficiency is the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency projects are building activities that implement capital water efficiency projects. Water efficiency projects can be stand-alone projects, and they do not need to be part of a larger capital improvement project.

(2) **Energy efficiency.** Energy efficiency is the use of improved technologies and practices to reduce the energy

consumption of water quality projects. Energy efficiency projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

(3) **Green infrastructure.** Green infrastructure includes a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology. Green infrastructure projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

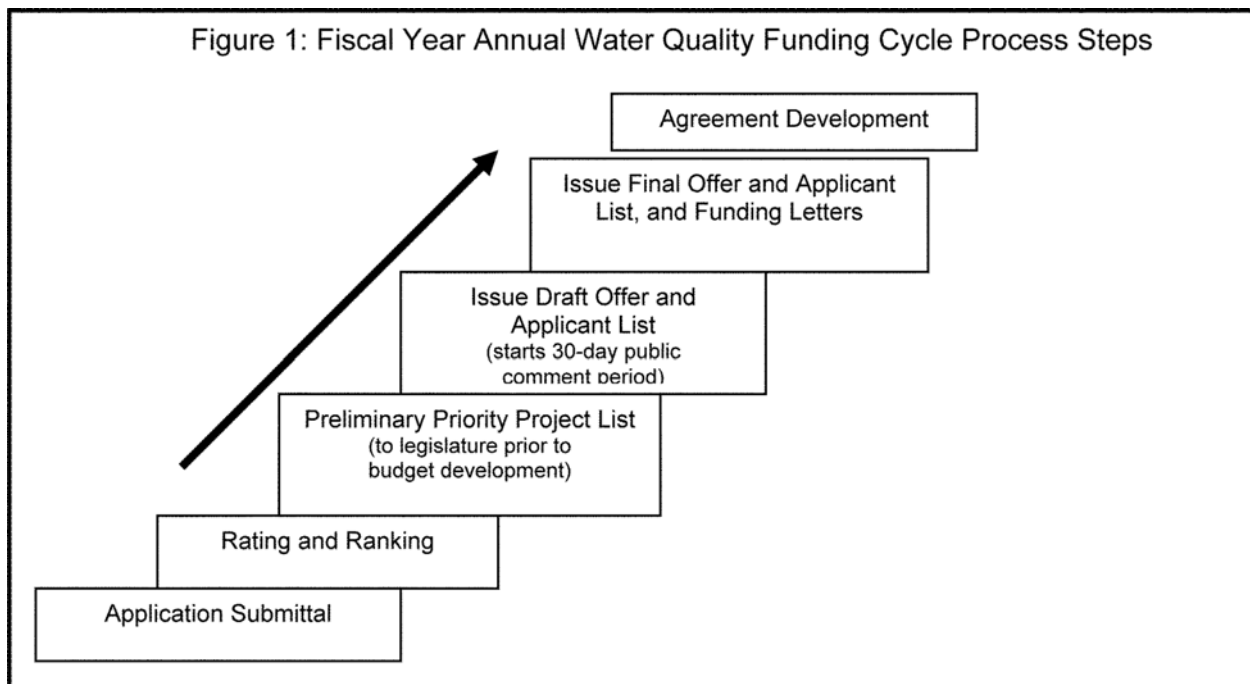
(a) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, flood plains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(b) On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

(4) **Environmentally innovative projects.** Environmentally innovative projects demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-210 Ecology's responsibilities.** (1) A general funding cycle schedule is provided in figure 1.



(2) In general, ecology will provide the following services although annual modifications may be made to accommodate varying schedules and requirements:

(a) Make available the application and applicable guidelines before the associated funding cycle begins;

(b) Conduct at least one application workshop in each of ecology's four regions;

(c) Conduct preapplication workshops to discuss regional level priorities if applicable;

(d) After the application deadline, complete an initial review of project proposals for funding eligibility;

(e) Request other agencies to provide evaluation assistance as needed;

- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit preliminary project priority list to the state legislature for budget consideration;
- (i) Develop a combined draft offer and applicant list and a draft revolving fund IUP;
- (j) Facilitate a public review and comment period for the combined draft offer and applicant list and revolving fund IUP;
- (k) Sponsor at least one public meeting to explain the combined draft offer and applicant list and the revolving fund IUP;
- (l) Develop a combined "final offer and applicant list" and a final revolving fund IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan agreements.

**AMENDATORY SECTION** (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-300 Wastewater treatment facilities construction.** (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
  - (b) Existing residential need at the time of application; and
  - (c) Level of financial burden placed on the ratepayers.
- (2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (i) Estimated construction cost;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The revolving fund annual debt service for the funded project;

- (vii) Other grants;
  - (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
  - (ix) The total number of households existing at the time of application that will be served by the project;
  - (x) The nonresidential share of the total annual costs is deducted; and
  - (xi) Median household income;
- (b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;
- (c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and
- (d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Forgivable principal loans may be provided with revolving funds as specified in WAC 173-98-330. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

(6) Figure 2. Loan Hardship-Funding Continuum

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
<b>Hardship Designation</b>	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
<b>Loan Hardship-Funding Continuum</b>	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest rate

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-310 On-site septic system repair and replacement programs.** (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site septic repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county median household income. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship
50 - 80% county MHI	30% of MR	Up to 15% of MR	Moderate
Below 50% county MHI	Up to 15% of MR	0%	Severe

((Figure 4-))

Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Figure 4.

Small Commercial Enterprise Annual Gross Revenue is:	20-Year Term	5-Year Term	Hardship Level
Above \$100,000	60% of MR	30% of MR	Nonhardship
\$50,000 - \$100,000	30% of MR	Up to 15% of MR	Moderate
Below \$50,000	Up to 15% of MR	0%	Severe

(4) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the RECIPIENT regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

(a) Homeowner income:

- (i) Above 80% of county MHI
- (ii) 50 to 80% of county MHI
- (iii) Below 50% of county MHI

(b) Small commercial enterprise annual gross revenue:

- (i) Above \$100,000
- (ii) \$50,000 to \$100,000
- (iii) Below \$50,000

NEW SECTION

**WAC 173-98-330 Forgivable principal.** (1) **Forgivable principal.** The department will apply the funding hardship continuum provided in figure 7 below to determine the amount of forgiveness principal. Financial hardship will be determined based on the provisions in WAC 173-98-300.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply:

Figure 6.



<b>Applicant information:</b>
<ul style="list-style-type: none"> <li>• Service area population &lt; 25,000</li> <li>• Sewer user rates are 3% to below 5% of the median household income</li> </ul>

<b>Applicant MAY be eligible for:</b>
<ul style="list-style-type: none"> <li>• 20-year repayment term at a 1% interest rate</li> <li>• Up to 75% of the loan principal may be forgiven based on existing residential need</li> </ul>

The interest rate in the example in figure 6 represents twenty percent of the average market rate for tax-exempt municipal bonds.

(2) **Figure 7. Forgivable principal hardship continuum** (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but Below 5.0%	5.0% and above
<b>Hardship Designation</b>	<i>Nonhardship</i> (Low sewer user rates in relation to MHI)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to MHI)
<b>Loan Hardship-Funding Continuum</b>	Not eligible for forgivable principal loan	50% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	75% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	100% forgivable principal loan up to ceiling amount defined in WAC 173-98-520

(3) The department will limit the amount of forgivable principal to a maximum of fifty percent of total eligible costs for a green project reserves project, not to exceed one million dollars. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding for the green project reserves category.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-400 Loan interest rates.** (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 or 173-98-3010 for hardship interest rates.

**Figure ((6)) 8: Loan Terms and Interest Rates**

Repayment Period	Interest Rate
Up to 5 years:	30% of the average market rate.
More than 5 but no more than 20 years:	60% of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-500 Funding categories.** (1) The revolving fund is split into two funding categories:

(a) Water pollution control facilities category: Eighty percent of the revolving fund is used for facilities projects as established under section 212 of the act; and

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under section 320 of the act (National Estuary Program) and section 319 of the act, the "Washington's water quality management plan to control nonpoint sources of pollution."

(2) If the demand is limited in either funding category, the department can shift moneys between the funding categories.

(3) The capitalization grant for federal fiscal year 2010 includes conditions for funding additional subsidization and green project reserves which creates new funding set aside for these specific purposes:

(a) Additional subsidization in the form of forgivable principal: Allowable amounts are based on minimums and maximums established in the 2010 Title VI appropriation.

(b) Green project reserves: Not less than twenty percent of the capitalization grant is dedicated for green project reserves.

(4) Additional subsidization in the form of forgivable principal and reduced interest rates may be provided for eligible green project reserves projects.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-520 Ceiling amounts.** (1) Water pollution control facilities category:

(a) Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

(2) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund monies, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(4) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

(6) The ceiling amount for forgivable principal provided for financial hardship for WAC 173-98-330 is five million dollars.

(7) Green project reserves category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(8) The ceiling amount for forgivable principal provided for eligible green project reserves projects is fifty percent of total eligible project costs. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding.

**WSR 10-09-099**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services)

[Filed April 21, 2010, 9:07 a.m., effective April 21, 2010]

Effective Date of Rule: April 21, 2010.

Purpose: This emergency rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new

HCBS waiver as of May 1, 2009. A CR-101 was filed as WSR 08-19-112 on September 17, 2008. This emergency supersedes the emergency filed as WSR 09-18-059.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0055, 388-845-0065, 388-845-0100, 388-845-0111, 388-845-0120, 388-845-0200, 388-845-0500, 388-845-0505, 388-845-0900, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1110, 388-845-1150, 388-845-1200, 388-845-1300, 388-845-1400, 388-845-1600, 388-845-1605, 388-845-1620, 388-845-1650, 388-845-1700, 388-845-1800, 388-845-1900, 388-845-2000, 388-845-2005, 388-845-2100, 388-845-2200, 388-845-3000, 388-845-3085, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, chapter 194, Laws of 2009; and section 205 (1)(i), chapter 329, Laws of 2008.

Other Authority: Title 71A RCW.

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: This emergency rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver May 1, 2009. A CR-101 was filed as WSR 08-19-112 on September 17, 2008. This emergency filing supersedes the emergency filed as WSR 09-18-059. The department has filed a CR-102 and is waiting for the public hearing to receive any additional comments from stakeholders.

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; and Recently Enacted State Statutes: New 18, Amended 38, 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 18, Amended 38, Repealed 0.

Date Adopted: April 14, 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 10-10 issue of the Register.

**WSR 10-09-106**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed April 21, 2010, 10:18 a.m., effective April 21, 2010, 10:18 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amends the current WAC to bring it into full compliance with Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, Public law 111-3, Section 214. Specifically, the department is adding certain PRUCOL aliens in the group eligible for pregnancy medical and children's medical, and updating Social Security requirements. Also, amends the rule in order to allow special immigrants from Iraq and Afghanistan to be eligible for federally funded benefits to the same extent and for the same period of time as refugees as allowed under federal law. This change must be implemented immediately to comply with Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120, Pub. L. No. 111-118.

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

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

Other Authority: CHIPRA (Pub. L. No. 111-3 §214); Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120 (Pub. L. No. 111-118).

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

Reasons for this Finding: Emergency rule adoption is required: (1) In order for the department to bring the WAC into compliance with federal CHIPRA legislation which extended medicaid benefits to not only qualified aliens but to certain PRUCOL aliens as well. (2) To extend the duration of eligibility of special immigrants from Iraq and Afghanistan for federally funded benefits from eight months from the date of entry into the United States or date of adjustment to special immigrant status, to the same period of time as refugees as required by Department of Defense Appropriations Act of 2010. Division A, Title VIII, Section 8120, Public law No. 111-118 and to align special immigrants' eligibility for cash and medicaid with their eligibility for Basic Food program benefits. This change went into effect December 19, 2009, and some individuals would receive limited assistance if the department made the change only via the regular rule-filing process. The department is concurrently working on the regular rule-filing process.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: April 21, 2010.

Katherine I. Vasquez  
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

(a) A U.S. citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; or

(f) A Hmong or Highland Lao (~~or~~

~~(g) A special immigrant from Iraq or Afghanistan eligible for eight months of federally funded assistance from your date of entry into the United States or from the date you received special immigrant status)).~~

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

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

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

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

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

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

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

(c) An individual in temporary protected status;

(d) A family unity beneficiary;

(e) An individual currently under deferred enforced departure;

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

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

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

(i) A religious worker;

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

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

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

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

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

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

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

## WSR 10-09-111

### EMERGENCY RULES DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 21, 2010, 11:51 a.m., effective April 21, 2010, 11:51 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing to amend via emergency adoption WAC 388-424-0001 and 388-424-0006 in order to allow special immigrants from Iraq and Afghanistan to be eligible for federally funded benefits to the same extent and for the same period of time as refugees as allowed under federal law. This change must be implemented immediately to comply with Public Law 111-118 the Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120.

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0001 and 388-424-0006.

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

Other Authority: P.L. 111-118 The Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120.

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

Reasons for this Finding: To extend the duration of eligibility of special immigrants from Iraq and Afghanistan for federally funded benefits from eight months from the date of entry into the United States or date of adjustment to special immigrant status, to the same period of time as refugees as required by the P.L. 111-118 The Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120, and to align special immigrants' eligibility for cash and medicaid with their eligibility for Basic Food program benefits. This change went into effect December 19, 2009, and some individuals would receive limited assistance if the department made the change only via the regular rule-filing process. The department is concurrently working on the permanent rule-filing process.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: April 21, 2010.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

**WAC 388-424-0001 Citizenship and alien status—**

**Definitions. "American Indians"** born outside the United States. American Indians born outside the U.S. are eligible for benefits without regard to immigration status or date of entry if:

(1) They were born in Canada and are of fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(2) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

**"Hmong or Highland Lao."** These are members of the Hmong or Highland Laotian tribe, which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the United States. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribe members.

**"Nonimmigrants."** These individuals are allowed to enter the U.S. for a specific purpose, usually for a limited time. Examples include:

- (1) Tourists,
- (2) Students,
- (3) Business visitors.

**"PRUCOL" (Permanently residing under color of law)** aliens. These are individuals who:

- (1) Are not "qualified aliens" as described below; and
- (2) Intend to reside indefinitely in the U.S.; and
- (3) United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or INS) knows are residing in the U.S. and is not taking steps to enforce their departure.

~~("Special immigrants from Iraq and Afghanistan." According to federal law, special immigrants are Iraqi and Afghan aliens granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA).)~~

**"Qualified aliens."** Federal law defines the following groups as "qualified aliens." All those not listed below are considered "nonqualified":

(1) **Abused spouses or children**, parents of abused children, or children of abused spouses, who have either:

(a) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried son or daughter of a Lawful Permanent Resident (LPR) - see definition of LPR below; or

(b) A notice of "prima facie" approval of a pending self-petition under the Violence Against Women Act (VAWA); or

(c) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA; and

(d) The alien no longer resides with the person who committed the abuse.

(e) Children of an abused spouse do not need their own separate pending or approved petition but are included in their parent's petition if it was filed before they turned age twenty-one. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn age twenty-one.

(f) An abused person who has initiated a self-petition under VAWA but has not received notice of prima facie approval is not a "qualified alien" but is considered PRUCOL. An abused person who continues to reside with the person who committed the domestic violence is also PRUCOL. For a definition of PRUCOL, see above.

(2) **Amerasians** who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam war.

(3) Individuals who have been granted **asylum** under Section 208 of the Immigration and Nationality Act (INA).

(4) Individuals who were admitted to the U.S. as **conditional entrants** under Section 203 (a)(7) of the INA prior to April 1, 1980.

(5) **Cuban/Haitian entrants**. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(6) Individuals who are **lawful permanent residents** (LPRs) under the INA.

(7) Persons who have been granted **parole** into the U.S. for at least a period of one year (or indefinitely) under Section 212 (d)(5) of the INA, including "public interest" parolees.

(8) Individuals who are admitted to the U.S. as **refugees** under Section 207 of the INA.

(9) **Special immigrants from Iraq and Afghanistan are individuals granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA).**

(10) Persons granted **withholding of deportation or removal** under Sections 243(h) (dated 1995) or 241 (b)(3) (dated 2003) of the INA.

**"Undocumented aliens."** These are persons who either:

- (1) Entered the U.S. without inspection at the border, or
- (2) Were lawfully admitted but have lost their status.

**"U.S. citizens."**

(1) The following individuals are considered to be citizens of the U.S.:

(a) Persons born in the U.S. or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens); or

(b) Legal immigrants who have naturalized after immigrating to the U.S.

(2) Persons born abroad to at least one U.S. citizen parent may be U.S. citizens under certain conditions.

(3) Individuals under the age of eighteen automatically become citizens when they meet the following three conditions on or after February 27, 2001:

(a) The child is a lawful permanent resident (LPR);

(b) At least one of the parents is a U.S. citizen by birth or naturalization; and

(c) The child resides in the U.S. in the legal and physical custody of the citizen parent.

(4) For those individuals who turned eighteen before February 27, 2001, the child would automatically be a citizen if still under eighteen when he or she began lawful permanent residence in the U.S. and both parents had naturalized. Such a child could have derived citizenship when only one parent had naturalized if the other parent were dead, a U.S. citizen by birth, or the parents were legally separated and the naturalizing parent had custody.

**"U.S. nationals."** A U.S. national is a person who owes permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(1) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(2) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

**"Victims of trafficking."** According to federal law, victims of trafficking have been subject to one of the following:

(1) Sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) Under federal law, persons who have been certified or approved as victims of trafficking by the federal Office of Refugee Resettlement (ORR) are to be treated the same as refugees in their eligibility for public assistance.

(4) Immediate family members of victims are also eligible for public assistance benefits as refugees. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

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

**WAC 388-424-0006 Citizenship and alien status—Date of entry.** (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on TANF, nonemergency medicaid, and SCHIP.

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, or who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar on TANF, nonemergency medicaid, and SCHIP unless exempt. The five-year bar starts on the date that "qualified" status is obtained.

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

(a) Amerasian lawful permanent residents;

(b) Asylees;

(c) Cuban/Haitian entrants;

(d) Persons granted withholding of deportation or removal;

(e) Refugees;

(f) Special immigrants from Iraq and Afghanistan;

(g) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR); and

((~~(g)~~)) (h) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.

(5) In addition to subsection (4) of this section, the following "qualified aliens" are also exempt from the five-year bar on nonemergency medicaid and SCHIP:

(a) Pregnant women;

(b) Children under nineteen years of age; and

(c) Children under twenty-one years of age who are residing in a medical institution as described in WAC 388-505-0230.

## WSR 10-09-112

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 21, 2010, 11:57 a.m., effective April 29, 2010]

Effective Date of Rule: April 29, 2010.

Purpose: The department is amending WAC 388-450-0015 What types of income does the department not use to figure out my benefits?

This amendment will exclude the federal \$25 supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009 for cash programs.

November 6, 2009, the president signed the Worker, Homeownership, and Business Assistance Act of 2009. Section 8 of the act requires that the \$25 federal supplemental unemployment compensation benefit be excluded as income or a resource when determining eligibility and benefits for the supplemental nutrition assistance program or SNAP. SNAP is administered under the Washington Basic Food program in Washington.

As federal regulations require these funds to be excluded for medicaid and SNAP, the department will exclude the payments for cash in order to provide consistent treatment of the payment across program lines.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.50 [74.04.050], 74.04.055, 74.04.510, and 74.08.090.

Other Authority: The Worker, Homeownership, and Business Assistance Act of 2009.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department already excludes the federal \$25 weekly unemployment compensation for federal and federally assisted programs. This amendment will allow the department to exclude these payments as income in determining eligibility and benefits for cash programs, and increase the aid the department provides to individuals who have lost their jobs during the economic downturn as intended by the federal economic stimulus. This amendment is already in place via an emergency adoption by WSR 10-02-038 dated December 30, 2009 [2009]. They expire on April 29, 2010. The department continues the permanent rule-making process. The department has filed a pre-proposal statement of inquiry as WSR 10-07-061 on March 15, 2010, and plans to file a proposed rule-making notice in early May.

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

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

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

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

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

Date Adopted: April 19, 2010.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-15-085 [and 09-16-095], filed 7/14/09 [and 8/04/09], effective 11/15/09)

**WAC 388-450-0015 What types of income does the department not use to figure out my benefits?** This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

~~((e))~~ (f) Energy assistance payments;

~~((f))~~ (g) Educational assistance we do not count under WAC 388-450-0035;

~~((g))~~ (h) Native American benefits and payments we do not count under WAC 388-450-0040;

~~((h))~~ (i) Income from employment and training programs we do not count under WAC 388-450-0045;

~~((i))~~ (j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

~~((j))~~ (k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

~~((k))~~ (l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

~~((l))~~ (m) Payments we are directly told to exclude as income under state or federal law.

~~((m))~~ (n) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

~~((n))~~ (o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

~~((o))~~ (p) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

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