

**WSR 09-08-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-35—Filed March 18, 2009, 3:11 p.m., effective March 20, 2009]

Effective Date of Rule: March 20, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The original Enchantment Park Ponds now named "Blackbird Island Pond" has been reconstructed for use as both a hatchery steelhead acclimation pond and juvenile angler's pond. From mid March until June, the pond will be used for steelhead acclimation. After all steelhead have left the pond, the Washington department of fish and wildlife will stock trout to provide angling opportunity for juvenile anglers (under fifteen years of age) only. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: March 18, 2009.

Philip Anderson  
 Director

NEW SECTION

**WAC 232-28-61900E Exceptions to statewide rules—Enchantment Park Ponds (Blackbird Island Pond).** Notwithstanding the provisions of WAC 232-28-619, effective March 20 through June 14, 2009, it is unlawful to fish in those waters of Enchantment Park Ponds, now known as Blackbird Island Pond.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 15, 2009:

WAC 232-28-61900E Exceptions to statewide rules—  
 Enchantment Park Ponds  
 (Blackbird Island Pond).

**WSR 09-08-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-36—Filed March 23, 2009, 2:58 p.m., effective April 1, 2009]

Effective Date of Rule: April 1, 2009.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-35000F and 220-56-38000Q; and amending WAC 220-56-350 and 220-56-380.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Last year the clam and oyster season at this park was scheduled to be open April 1 through June 15, but was closed most of this time by department of health due to paralytic shellfish poisoning (PSP). PSP closures have prevented harvest on this beach during much of the spring season for the last several years. This season change was adopted by the fish and wildlife commission at their February 2009 meeting. These rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: March 23, 2009.

Philip Anderson  
 Director

NEW SECTION

**WAC 220-56-35000F Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective April 1 through May 14, 2009, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the public tidelands at Fort Flagler State Park.

NEW SECTION

**WAC 220-56-38000Q Oysters—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-380, effective April 1 through May 14, 2009, it is unlawful to take, dig for and possess oysters taken for personal use from the public tidelands at Fort Flagler State Park.

REPEALER

The following sections of the Washington Administrative Code are repealed effective May 15, 2009:

WAC 220-56-35000F	Clams other than razor clams—Areas and seasons.
WAC 220-56-38000Q	Oysters—Areas and seasons.

**WSR 09-08-020  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-41—Filed March 23, 2009, 3:05 p.m., effective March 23, 2009, 3:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-77-090 and 220-77-095.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The law regulates the control of aquatic invasive species (AIS) and the management of ballast water. Ballast water can carry chemicals, other pollutants, and AIS, making it a significant risk to the marine and fresh waters of the state, and therefore to the health, safety, and general welfare of Washington residents. It is vitally important to prevent the introduction of AIS and ballast-water pollution because once introduced, they are very difficult and costly to eradicate. These rules are interim while permanent rules are being developed.

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 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 23, 2009.

Philip Anderson  
Director

NEW SECTION

**WAC 220-77-09000H Ballast water management and control—Reporting and sampling requirements.** Notwithstanding the provisions of WAC 220-77-090:

(1) Vessels that are subject to chapter 77.120 RCW must report ballast water management information to the department at least twenty-four hours prior to entering Washington waters, by filing a ballast water reporting form pursuant to Title 33 C.F.R. Part 151.2045. Forms must be submitted to the department in electronic format (preferred) to ballastwater@dfw.wa.gov, or by fax to 360-902-2845.

Vessel owners and operators who rely on a third party to collect and forward ballast water reporting forms are responsible for ensuring that the department receives the ballast water management information as required in this subsection.

(2) Vessels not intending to discharge ballast water into Washington state waters shall notify the department in one of the following ways:

(a) Owners or operators of one or more vessels who do not wish to file a ballast water reporting form may send a signed form letter, as provided by the department and at least thirty days prior to entering Washington waters, to the department by e-mail at ballastwater@dfw.wa.gov; by fax at 360-902-2845; or by U.S. mail to the state ANS coordinator at Department of Fish and Wildlife, 600 Capitol Way No., Olympia, WA 98501-1091. The signed letter must include the following information:

(i) Vessel names identification numbers (International Maritime Organization, Lloyds of London, or U.S. Coast Guard registry number), owner, agent, and vessel types; and

(ii) A statement that the vessel will not discharge ballast water into Washington state waters; and

(iii) The signature of the owner, operator, or other authorized representative.

(b) Vessels that would normally discharge ballast water, but will not discharge on a particular trip and are not covered under the requirements of (a) of this subsection, must file a ballast water reporting form as described in subsection (1) of this section.

(3) The department, or designated representatives, may at reasonable times and in a reasonable manner during a vessel's scheduled stay in port, take samples of ballast water and sediment, examine ballast water management records, and

make other appropriate inquiries to assess the compliance of vessels with ballast water reporting and control requirements.

(4) Vessel operators claiming a safety exemption under RCW 77.120.030(4) must notify the department of their intent to do so on the ballast water reporting form as required in subsection (1) of this section. Notification requires writing the words "SAFETY EXEMPTION" on the form where it asks "If no ballast treatment conducted, state reason why not:" and stating the cause as either "ADVERSE WEATHER," "VESSEL DESIGN LIMITATION," "EQUIPMENT FAILURE," or "EXTRAORDINARY CONDITION."

(a) No safety exemption request is required if the vessel does not intend to discharge unexchanged or untreated ballast water and follows the requirements under subsection (2) of this section.

(b) Vessel operators may rescind a safety exemption claim by filing an amended ballast water reporting form and notifying the department as required in subsection (1) of this section.

(5) The department will review safety exemption claims as noted in subsections (3) and (4) of this section.

(a) The department will determine whether a compliance plan and alternative strategy are required. Compliance plans and alternative interim strategies will be established to minimize discharge of future unexchanged ballast water until compliance with this section can be met.

(b) The department will assess a safety exemption fee using the following as guidance:

(i) Minimum five hundred dollar fee for administrative costs to assess compliance; and

(ii) Larger fees may be assessed by the department based on vessel history, risk, and degree of failure in implementing prior compliance plans and alternative strategies.

(6) The department may impose civil penalties ranging from a warning letter up to twenty-seven thousand five hundred dollars for violation of the requirements of this section pursuant to RCW 77.120.070. Each day of a continuing violation constitutes a separate violation. The department will assess civil penalties based on elements that include, but are not limited to:

(a) Degree and nature of failure in meeting reporting requirements;

(b) Degree and nature of failure in allowing reasonable department inspection of a vessel's ballast water management records or allowing samples to be taken from ballast tanks;

(c) Degree and nature of failure in preventing or stopping discharge upon request by department;

(d) Volume and risk of introducing invasive species based on the source of unexchanged or untreated discharge;

(e) Discharge of treated water using a technology that has not been approved for use in waters of the state; and

(f) Vessel and operator violation history.

#### NEW SECTION

**WAC 220-77-09500F Interim ballast water discharge standard approval process.** Notwithstanding the provisions of WAC 220-77-095:

(1) The Washington state interim ballast water discharge standard is inactivation or removal of ninety-five percent of

zooplankton organisms and ninety-nine percent of phytoplankton and bacteria organisms.

(2) Vessels subject to chapter 77.120 RCW that have not adequately exchanged their ballast water must treat their ballast to meet or exceed the state's discharge standards prior to discharging ballast water into Washington waters.

(3) An interim approval process shall be used to provide approval for ballast water treatment technologies that are determined to meet, or have the potential to meet, the Washington state interim ballast water discharge standard. Only ballast water treatment technologies that are approved through this process may be used on specified vessels to discharge treated ballast water into Washington waters.

(a) Approval for use of a technology in waters of the state must meet one or more of the following criteria:

(i) The technology was previously approved by the department for use in waters of the state for the term as specified in their approval letter;

(ii) The technology is approved by the U.S. Coast Guard for use in national waters;

(iii) The vessel is enrolled in the U.S. Coast Guard STEP program;

(iv) The technology is approved by the state of California for use in their state waters;

(v) The technology is approved by the International Maritime Organization (IMO) and authorized by the U.S. State Department and U.S. Coast Guard for use in national waters; or

(vi) The vessel is enrolled in the IMO approval process and authorized by the U.S. State Department and U.S. Coast Guard for use in national waters.

(b) Technologies using chemicals or that produce chemical by-products upon discharge will be evaluated by the department of ecology for meeting state water quality standards before acceptance.

(c) Technologies may be approved for use on specific vessels in state waters for up to five years.

(d) The director or the director's designee will accept applications for approval at any time. The applicant is to be notified of the department's receipt of the application package within ten working days. If the application package is incomplete, the application will be returned to the applicant with an explanation of the deficiencies or, if the deficiencies are minimal, held for thirty days to allow the applicant to correct the deficiencies. Formal reviews of supporting records and water quality data will be completed within forty-five days of receipt of the complete application package.

(e) The director, or the director's designee, shall make one of the following determinations:

(i) Approval - The ballast water treatment technology is approved for use in Washington state; or

(ii) Deny approval - The ballast water treatment technology is not approved for use in Washington state.

(f) Criteria for review. Applications for interim approval of a ballast water treatment system shall be evaluated on the completeness of the following:

(i) Documentation verifying that the technology and vessel(s) meet one of the criteria noted in (a) of this subsection;

(ii) Documentation verifying that the residual concentrations of any primary treatment chemicals or chemicals that

occur as by-products of the treatment meet all applicable regulatory requirements; and

(iii) Documentation describing the technical, operational, and installation characteristics of the system.

(g) Conditions of approval;

(i) Approval of a technology shall be withdrawn if the technology or vessel is no longer enrolled in the U.S. Coast Guard STEP or IMO approval process, is no longer approved for use in California waters, or has not been approved for use by the U.S. Coast Guard in national waters or by the IMO in international waters;

(ii) Systems approved under the interim process will be subject to all subsequent standards and regulations upon the expiration of the interim approval period;

(iii) Vessels or technologies receiving interim approval shall be subject to inspections by the department or the department's designated representative to verify adherence with the terms of this interim approval agreement and the operation of the treatment systems; and

(iv) Nothing in these rules, ballast water legislation, or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other state, federal, and international laws governing business, marine applications, or other elements.

#### WSR 09-08-026

##### EMERGENCY RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 24, 2009, 9:04 a.m., effective March 24, 2009, 9:04 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of the rules is to comply with the legislative directive to implement an alternative assessment method that shall be an evaluation of a collection of work samples prepared and submitted by an applicant, as provided for in RCW 28A.655.065, to demonstrate achievement of the state content areas in which the student has not yet met [the] standard on the high school Washington assessment of student learning (WASL).

Citation of Existing Rules Affected by this Order: Amending WAC 392-501-510.

Statutory Authority for Adoption: RCW 28A.655.061, 28A.665.065 [28A.655.065].

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: Certain students of the 2009 graduating class may be negatively impacted by existing rules within the affected WAC. Emergency rule adoption ensures that these students can access alternatives to the state graduation requirements that are more relevant to their specific situation.

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

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

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

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

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

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

Date Adopted: March 23, 2009.

Randy I. Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

#### **WAC 392-501-510 Access to alternative assessment.**

(1) Students who transfer into a public school from out-of-state or from out-of-country in the eleventh or twelfth grade year may utilize an objective alternative assessment for purposes of meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the ((Washington)) state high school assessment ((of student learning)).

(2) Students who transfer for their 11th or 12th grade year into a public school from within the state from a nonpublic school setting may utilize an objective alternative assessment for meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the state high school assessment.

(3) Students who were exempted from the high school assessment in 10th grade due to their status as a new student with non-English proficiency, may utilize an objective alternative assessment after their 10th grade year, in the content areas originally exempted, for purposes of meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the state high school assessment.

#### WSR 09-08-028

##### EMERGENCY RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 24, 2009, 9:08 a.m., effective March 24, 2009, 9:08 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of the rules is to provide an appropriate graduation alternative for a portion of the special education population that is defined as functioning at the awareness level. This new set of rules meets the intent of RCW 28A.155.045 authorizing the superintendent of public instruction to establish guidelines that waive certain graduation requirements associated with RCW 28A.655.061.

Statutory Authority for Adoption: RCW 28A.665.061 [28A.655.061], 28A.155.045.

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: Certain students of the 2009 graduating class may be negatively impacted by existing rules as the specific circumstances of these students are not appropriately addressed with current statute. Emergency rule adoption ensures that these students can access the alternative stipulated in the new rule set as a means to achieving requisite graduation requirements more in keeping with their particular situation.

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

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

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

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

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

Date Adopted: March 23, 2009.

Randy I. Dorn  
Superintendent of  
Public Instruction

#### NEW SECTION

**WAC 392-501-700 General description.** RCW 28A.155.045 authorizes the superintendent of public instruction to develop guidelines for waiving specific requirements in RCW 28A.655.061 pertaining to the graduation requirements and the state assessment system, and to determine appropriate assessment alternatives through which to assess identified students.

#### NEW SECTION

**WAC 392-501-705 Eligibility and application requirements.** (1) A student, or a student's parent or guardian, may initiate a waiver request to the superintendent of public instruction if a student's cognitive development is identified at the awareness level. The waiver request can cover one or all state assessed content areas of study. Students with cognitive development at the awareness level exhibit behaviors that include, but are not limited to, the following:

(a) Having limited intentionality and being unable to communicate using presymbolic strategies.

(b) Reactions to environmental stimuli are limited to crying, opening eyes, movement, etc.

(c) Behavior not under the student's control but reflects a general physical state (e.g., hungry, wet, sleepy).

(d) Being conscious (awake) during limited times each day.

(e) Requiring parents, teachers, or other adults to interpret the child's state from behaviors such as sounds, body movements, and facial expressions.

(f) Other criteria as defined by the superintendent of public instruction's guidelines posted to the agency web site.

(2) For a student requesting a waiver under this section, the student must have the following documented in his or her records:

(a) The student is in high school and is designated as being in the 11th or 12th grade.

(b) The individualized education program (IEP) team as identified under WAC 392-172A-03095, through an evaluation of the student's behaviors and educational history, determines that the student is functioning at the awareness level (as defined in subsection (1) of this section).

(3) Filing a waiver request requires the use of a specific form developed by the superintendent of public instruction. Completing the waiver request requires:

(a) The special education teacher responsible for the IEP of the student to complete and sign the awareness waiver application and document the student's nonparticipation in the state assessment system in the student's IEP.

(b) The waiver application is submitted to the district's special education director for review, verification, and signature.

(c) Upon verification, the district special education director files the waiver application form with the district assessment coordinator.

(d) The district assessment coordinator reviews, signs, and transmits the waiver application to the superintendent of public instruction per instruction listed on the form.

(e) Staff from the office of superintendent of public instruction shall record a status of "waived" in the state data base, then transmit a confirmation e-mail to the student's high school principal and the district assessment coordinator.

(f) The school shall complete all necessary school and district documentation, including but not limited to, IEP documentation.

#### **WSR 09-08-029**

#### **EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 09-39—Filed March 24, 2009, 9:34 a.m., effective April 1, 2009]

Effective Date of Rule: April 1, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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 year 2,000 spring chinook are expected to return to the Klickitat River, twice the size of last year's actual return. After consulting with the Yakama Indian Nation, an extra weekend day of sport fishing was added. This will allow anglers more time to target surplus hatchery spring chinook returning to Klickitat Salmon Hatchery. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: March 24, 2009.

Loreva M. Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900G Exceptions to statewide rules—Klickitat River.** Notwithstanding the provisions of WAC 232-28-619, effective April 1 through May 31, 2009, a person may fish in waters of the Klickitat River from the mouth to the Fisher Hill Bridge, Sundays, Mondays, Wednesdays and Saturdays only. Daily limit is one hatchery Chinook or hatchery steelhead. Release all wild Chinook and wild steelhead. Minimum size is 12 inches for salmon and 20 inches for steelhead.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective June 1, 2009:

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

#### **WSR 09-08-033 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 09-40—Filed March 24, 2009, 2:09 p.m., effective March 27, 2009, 12:01 a.m.]

Effective Date of Rule: March 27, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: 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: March 23, 2009.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-56-36000T 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. March 27 through 11:59 a.m. March 29, 2009, razor clam digging is allowed in Razor Clam Area 2 and that portion of Razor Clam Area 3 that is between the Copalis River (Grays Harbor County) and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. only.

2. Effective 12:01 a.m. March 28 through 11:59 a.m. March 29, 2009, razor clam digging is allowed in Razor Clam Area 1 and that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the Copalis River (Grays Harbor 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.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. March 29, 2009:

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

**WSR 09-08-034**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-38—Filed March 24, 2009, 2:14 p.m., effective March 29, 2009,  
1:00 p.m.]

Effective Date of Rule: March 29, 2009, 1:00 p.m.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes

have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

Sets the initial commercial fishing period for the winter/spring salmon season, consistent with the compact action of March 20, 2009. The fishery is consistent with the *U.S. v. Oregon Management Agreement* and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 24, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-33-01000A Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed:

**1. Mainstem Columbia River**

a) Area: SMCRA 1D - 1E, only in the area from the west towers on Hayden Island upstream to the commercial fishing boundary near Beacon Rock.

b) Dates: 1:00 p.m. to 11 p.m. on March 29, 2009.

c) Gear: Drift gill nets only, 4-1/4 inch maximum mesh. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Monofilament gill nets are not allowed for the 4-1/4 inch mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

Net length not to exceed 150 fathoms, except under the following conditions: An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel must be a minimum of 5 feet in depth and must not exceed 10 feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers, must extend a minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 175 fathoms. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks under miscellaneous regulations.

Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net

is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

e) Sanctuaries: Washougal and Sandy rivers.

f) Miscellaneous Regulations:

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

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

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

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

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

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

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

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

viii. Columbia River tangle net certification: This is any individual meeting the qualifications of RCW 77.65.040(2) and who obtained a tangle net certificate by attending and



completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques. At least one fisher on each boat must have tangle net certification.

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

## 2. Blind Slough Select Area

a) Area: Only Blind Slough area open during winter season (see dates below), and both Blind Slough and Knappa Slough areas open during spring season (see dates below).

b) Dates: Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays, **and** 7:00 p.m. Sunday to 7:00 a.m. Monday, immediately through March 29, 2009; **and** 7:00 p.m. Sunday, April 5, to 7:00 a.m. Monday, April 6, 2009.

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, **and** 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 16 through April 28.

c) Gear: Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Winter season: 7-inch minimum mesh. Spring Season: 8-inch maximum mesh.

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

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

## 3. Deep River Select Area

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

b) Dates: Winter Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays immediately through March 31. Spring Season: 7:00 p.m. Sundays to 7:00 a.m. Mondays, **and** 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays, from April 15 through April 30, 2009.

c) Gear: Nets are restricted to a maximum length of 100 fathoms with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to any stationary structures. Nets may not fully cross the navigation channel. Winter season: 7-inch minimum mesh. Spring season: 8-inch maximum mesh.

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

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled

individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

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

## 4. Tongue Point

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

b) Dates: 7:00 p.m. Mondays through 7:00 a.m. Tuesdays **and** 7:00 p.m. Thursdays through 7:00 a.m. Fridays from April 20 through April 28, 2009.

c) Gear: In the Tongue Point fishing area, gear restricted to 8-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 8-inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

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

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful until ODFW staff has biologically sampled individual catches. A sampling station will be established at the MERTS dock. After sampling, fishers will be issued a transportation permit by agency staff.

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

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

## REPEALER

The following section of the Washington Administrative Code is repealed effective 1:00 p.m. March 29, 2009:

WAC 220-33-01000Z Columbia River seasons below Bonneville. (09-32)

The following section of the Washington Administrative Code is repealed effective May 1, 2009:

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

**WSR 09-08-041**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed March 25, 2009, 11:39 a.m., effective March 25, 2009, 11:39 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of the rules is to comply with the legislative directive to implement procedures allowing students rights to appeal state assessment requirements under conditions of special, unavoidable circumstances, as stipulated in RCW 28A.655.065.

Citation of Existing Rules Affected by this Order: Amending WAC 392-501-600, 392-501-601, and 392-501-602.

Statutory Authority for Adoption: RCW 28A.665.065 [28A.655.065], 28A.665.061 [28A.655.061], 28A.155.045.

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: Certain students of the 2009 graduating class may be negatively impacted by existing rules within the affected WAC. Emergency rule adoption ensures that these students can access alternatives to the state graduation requirements that are more relevant to their specific situation.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: March 23, 2009.

Randy I. Dorn  
 Superintendent of  
 Public Instruction

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-600 General description.** RCW 28A.655.065 directs the superintendent of public instruction to develop guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and RCW 28A.155.045 pertaining to the certificate of individual achievement for students who have special, unavoidable circumstances.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-601 Eligibility and application requirements.** (1) A student, or a student's parent or guardian may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's twelfth grade year, from successfully demonstrating his or her skills and knowledge on the Washington assessment of student learning (WASL), on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or on a Washington alternate assessment available to students eligible for special education services.

(2) Special, unavoidable circumstances shall include the following:

(a) Not being able to take or complete an assessment because of:

(i) The death of a parent, guardian, sibling or grandparent;

(ii) An unexpected and severe medical condition. The condition must be documented by a medical professional and included with the application; or

(iii) Another unavoidable event of a similarly compelling magnitude that reasonably prevented the student from sitting for or completing the assessment.

(b) A major irregularity in the administration of the assessment;

(c) Loss of the assessment material;

(d) Failure to receive an accommodation during administration of the assessment that was documented in the student's individualized education program that is required in the federal Individuals with Disabilities Education Act, as amended, or in a plan required (~~(+)~~) under Section 504 of the Rehabilitation Act of 1973;

(e) For students enrolled in the state transitional bilingual instructional program, failure to receive an accommodation during the administration of the assessment that was scheduled to be provided by the school district; or

(f) Students who transfer from an out-of-state or out-of-country school to a Washington public school in the twelfth grade year after March 1.

(3) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school an appeal application on a form developed by the superintendent of public instruction.

(4) The application shall require that the following be submitted: All available score reports from prior standardized assessments taken by the student during his or her high school years, the medical condition report (if applicable), and the student's transcript. The principal of the school shall review the application and accompanying material and certify that, to the best of his or her knowledge, the information in the application is accurate and complete.

~~((4))~~ (5) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the school district's assessment coordinator who will conduct an independent review for completeness prior to transmitting the application to the state superintendent of public instruction.

~~((5))~~ (6) Applications must be received by the superintendent of public instruction on or before May 1 or ~~((August))~~ October 1. ~~((The May 1 deadline is intended primarily for students who were not able to participate in the spring assessment, while the August deadline is intended primarily for students who decide to file an appeal after receiving their scores in June.))~~

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-602** ~~((High school graduation certificate))~~ **Special, unavoidable circumstance appeal(s) review board and approval criteria.** (1) The ~~((high school graduation certificate))~~ special, unavoidable circumstance appeal(s) review board shall be created to review and make recommendations to the superintendent of public instruction on all special, unavoidable circumstance appeal applications.

(2) The superintendent of public instruction shall appoint ~~((five))~~ seven members total to the board, five voting members and two alternates (for cases of unanticipated absenteeism or potential conflict of interest on the part of a regular voting member). The board shall be chaired by a current or former high school principal and shall consist of current or former teachers, department heads, and/or school district assessment directors with experience and expertise in the Washington essential academic learning requirements. Each member shall be appointed for a three-year term, provided that the initial terms may be staggered as the superintendent deems appropriate.

(3) The high school graduation certificate appeals review board shall review applicable special, unavoidable circumstance appeal applications submitted to it by the superintendent of public instruction. The board shall:

(a) Review the written information submitted to the superintendent to determine whether sufficient evidence was presented that the student has the required knowledge and skills; and

(b) Make a recommendation to the superintendent, based on the criteria in subsection (6) of this section, regarding whether or not the appeal should be granted.

(4) Staff from the office of ~~((the))~~ superintendent of public instruction (OSPI) shall coordinate and assist the work of the board. In this capacity, staff from the OSPI shall prepare a preliminary analysis of each application and accompanying information that evaluates the extent in which the criteria in subsection (6) of this section have been met.

(5) If the board determines that additional information on a particular student is needed in order to fulfill its duties, the chair of the board shall contact the OSPI staff to request the information.

(6) The board shall recommend to the superintendent of public instruction that the appeal be granted if it finds that:

(a) The student, due to special, unavoidable circumstances as defined in WAC 392-501-601(2), was not able to successfully demonstrate his or her skills on the WASL, on an objective alternative assessment, or on a Washington alternate assessment available to students eligible for special education services;

(b) No other recourse or remedy exists to address the special, unavoidable circumstance prior to the student's expected graduation date;

(c) The student has met, or is on track to meet, all other state and local graduation requirements; and

(d) After considering the criteria below, in the board's best judgment, the student more likely than not possesses the skills and knowledge required to meet the state standard. The board shall consider the following criteria:

(i) Trends indicated by prior WASL or alternate assessment results;

(ii) How near the student has been in achieving the standard;

(iii) Scores on other assessments, as available;

(iv) Participation and successful completion of remediation courses and other academic assistance opportunities;

(v) Cumulative grade point average;

(vi) Whether the student has taken advanced placement, honors, or other higher-level courses; and

(vii) Other available information deemed relevant by the board.

(7) Based upon the recommendation of the high school graduation appeals board and any other information that the superintendent deems relevant, the superintendent of public instruction shall decide, based on the criteria established in subsection (6) of this section, whether to:

(a) Grant the appeal and waive the requirement that a student earn a certificate to graduate;

(b) Deny the appeal and not waive the certificate; or

(c) Remand the appeal back to the appeals board for further information or deliberation.

(8) The superintendent of public instruction shall act upon the student's application and notify the student, the student's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of the deadline for receiving the recommendation from the certificate appeals review board. This deadline for acting on the application may be extended if additional information is required from the student or the school district.

(9) If approved, the student's transcript shall indicate that the applicable certificate was waived.

(10) School staff shall include a copy of the application, supporting information, and the superintendent's decision in the student's cumulative folder.

**WSR 09-08-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-43—Filed March 27, 2009, 3:59 p.m., effective March 31, 2009, 8:36 p.m.]

Effective Date of Rule: March 31, 2009, 8:36 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 232-28-61900C.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The steelhead fishery in these waters was authorized under a federal permit that prescribes strict limits on incidental catch of wild steelhead protected under the federal Endangered Species Act (ESA). The closures are now necessary to protect wild steelhead now returning to the Methow and Okanogan river systems.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: March 27, 2009.

Joe Stohr  
for Philip Anderson  
Director

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 8:36 p.m. March 31, 2009:

WAC 232-28-61900C Exceptions to statewide rules—Columbia, Methow, Okanogan and Similkameen rivers. (09-30)

**WSR 09-08-082**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed March 30, 2009, 1:04 p.m., effective April 1, 2009]

Effective Date of Rule: April 1, 2009.

Purpose: The department is amending WAC 388-515-1507 What are the financial requirements for home and community based (HCB) services when you are eligible for a noninstitutional categorically needy (CN) medicaid program?

DSHS is amending this rule as the Centers for Medicare and Medicaid Services (CMS) has approved healthcare for

workers with disabilities (HWD) eligibility to be included in the financial eligibility for the categorically needy (CN) home and community program waiver. This change is effective April 1, 2009, as authorized under section 1915(c) of the Social Security Act.

Citation of Existing Rules Affected by this Order: Amending WAC 388-515-1507.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Other Authority: Section 1915(c) of the Social Security Act.

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

Reasons for this Finding: This emergency rule implements changes made to the home and community program waiver by CMS, as authorized under section 1915(c) of the Social Security Act.

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

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

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

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

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

Date Adopted: March 25, 2009.

Stephanie E. Schiller  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

**WAC 388-515-1507 What are the financial requirements for home and community based (HCB) services when you are eligible for a noninstitutional categorically needy (CN) medicaid program?** (1) You are eligible for medicaid under one of the following programs:

(a) Supplemental Security Income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;

(b) SSI-related CN medicaid described in WAC 388-475-0100 (2)(a) and (b);

(c) SSI-related healthcare for workers with disabilities program (HWD) described in WAC 388-475-1000. If you are receiving HWD you are responsible to pay your HWD premium as described in WAC 388-475-1250. This change is effective April 1, 2009;

(d) General assistance expedited medicaid disability (GAX) or general assistance based on aged/blind/disabled

criteria described in WAC 388-505-0110(6) and are receiving CN medicaid.

(2) You are not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1366. This does not apply to PACE or hospice services.

(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).

(5) You do not pay (participate) toward the cost of your personal care services.

(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.

(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.

(b) If subsection (6)(a) applies and you are receiving HWD described in WAC 388-475-1000 you are responsible to pay your HWD premium as described in WAC 388-475-1250 in addition to the room and board standard.

(7) If you are eligible for general assistance expedited medicaid disability (GAX) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6), you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the general assistance program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and general assistance grant to the facility for the cost of room and board up to the ADSA room and board standard; or

(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents, which you keep for your PNA.

(8) Current resource and income standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(9) Current PNA and ADSA room and board standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/lcstandardsPNAchartsfile.shtml>.

## WSR 09-08-083

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 30, 2009, 1:08 p.m., effective April 1, 2009]

Effective Date of Rule: April 1, 2009.

Purpose: Recently passed federal legislation allows states, beginning April 1, 2009, to provide medicaid and state children's health insurance program coverage to legal immigrant children and pregnant women without the five-year delay from the time of their United States entry. This change will allow the state to obtain federal matching funds for this population, which will result in cost savings to the state.

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0006, 388-424-0010, and 388-424-0016.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.08.090.

Other Authority: P.L. 111-3 (H.R. 2, Title II, Section 214 - Children's Health Insurance Program Reauthorization Act of 2009).

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

Reasons for this Finding: Implementing this rule change will save the state money by allowing DSHS to draw down federal matching funds. Given the current budget revenue crisis that is forcing the state to cut programs and services, implementing this change will allow the state to utilize the cost savings for other programs and services.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: March 17, 2009.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-07-023, filed 3/9/07, effective 4/9/07)

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

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

**WAC 388-424-0010 Citizenship and alien status—**  
**Eligibility restrictions for ~~((the temporary assistance for needy families program and medical benefits, including))~~ TANF, nonemergency medicaid, and ~~((the children's healthcare programs))~~ SCHIP.** (1) To receive TANF, non-emergency medicaid, or ~~((medical benefits))~~ SCHIP, you must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien";
- (e) A victim of trafficking;
- (f) A Hmong or Highland Lao;

(g) A special immigrant from Iraq 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; or

(h) A special immigrant from Afghanistan eligible for six 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 ~~((benefits))~~.

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

(a) He or she is an alien as described ~~((under))~~ 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.

(4) An alien who is ineligible for TANF ~~((non-emergency medicaid, or SCHIP))~~ 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 ~~((health program))~~ healthcare benefits as described in WAC 388-505-0210.

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

**WAC 388-424-0016 Citizenship and alien status—**  
**Immigrant eligibility restrictions for state medical benefits.** ~~((4))~~ To receive general assistance medical (medical care services) you must meet the alien requirements of general assistance as described in WAC 388-424-0015(2) and be a recipient of general assistance cash.

~~((2) To receive medical benefits for pregnancy, you must be ineligible for other programs as described in WAC 388-462-0015, verify you are pregnant, and be:~~

~~((a) A "qualified alien" who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3);~~

~~((b) PRUCOL as defined in WAC 388-424-0001; or~~

~~((c) An undocumented alien as defined in WAC 388-424-0001.))~~

**WSR 09-08-084**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed March 30, 2009, 1:11 p.m., effective April 1, 2009]

Effective Date of Rule: April 1, 2009.

Purpose: Amend rules in Title 388 WAC related to eligibility and benefit levels for the Washington combined application program (WASHCAP) and the Washington Basic Food program (Basic Food). These changes must be implemented effective April 1, 2009, to comply with federal requirements for the supplemental nutrition assistance program under the American Recovery and Reinvestment Act of 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 388-412-0015, 388-444-0030, and 388-478-0060.

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

Other Authority: The American Recovery and Reinvestment Act of 2009 (P.L. 110-05).

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: To implement the provisions of the American Reinvestment and Recovery Act of 2009 (P.L. 110-5), the United States Department of Agriculture, Food and Nutrition Service (FNS) has published new maximum benefit amounts, minimum monthly benefits, and guidance on time limits for able bodied adults without dependents to implement the provisions of the act relating to the supplemental nutrition assistance program. This emergency adoption implements the federally required rule changes to the SNAP program administered in Washington under WASHCAP and Basic Food.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: March 25, 2009.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-24-051, filed 11/25/08, effective 12/26/08)

**WAC 388-412-0015 General information about your Basic Food allotments.** (1) Your monthly Basic Food benefits are called an allotment. An allotment is the total dollar value of benefits your eligible assistance unit (AU) gets for a calendar month.

(2) You cannot receive the same type of benefit in:

(a) Two states in the same month;

(b) Two AUs in the same month, unless;

(c) You left the AU to live in a shelter for battered women and children. See WAC 388-408-0045.

(3) If your AU does not have any countable net income, you get the maximum allotment for the number of eligible people in your AU. See WAC 388-478-0060 for the maximum allotments.

(4) If your AU has countable net income under WAC 388-450-0162, we calculate, your allotment by:

(a) Multiplying your AU's countable net monthly income by thirty percent;

(b) Rounding this amount up to the next whole dollar; and

(c) Subtracting the result from the maximum allotment.

(5) If we determine you are eligible for Basic Food, your first month's benefits are from the date you applied for benefits through the end of the month of your application. If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055. This is called proration and is based on a thirty-day month.

(6) If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for Basic Food, we issue both your first and second months benefits in one allotment if you are eligible for both months.

(7) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(8) If your AU has one or two members, your monthly allotment will be at least ~~((fourteen))~~ sixteen dollars unless:

(a) It is the first month of your certification period;

(b) Your AU is eligible for only a partial month; and

(c) We reduced your first month's allotment below ~~((fourteen))~~ sixteen dollars based on the date you became eligible for Basic Food under WAC 388-406-0055.

AMENDATORY SECTION (Amending WSR 08-24-050, filed 11/25/08, effective 12/26/08)

**WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?** If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE ((~~10-1-2008~~)) 4-1-2009

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$1,127	\$867	<del>((176))</del> <u>200</u>	\$1,430
2	1,517	1,167	<del>((323))</del> <u>367</u>	1,925
3	1,907	1,467	<del>((463))</del> <u>526</u>	2,420
4	2,297	1,767	<del>((588))</del> <u>668</u>	2,915
5	2,687	2,067	<del>((698))</del> <u>793</u>	3,410
6	3,077	2,367	<del>((838))</del> <u>952</u>	3,905
7	3,467	2,667	<del>((926))</del> <u>1,052</u>	4,400
8	3,857	2,967	<del>((1,058))</del> <u>1,202</u>	4,895
9	4,247	3,267	<del>((1,190))</del> <u>1,352</u>	5,390
10	4,637	3,567	<del>((1,322))</del> <u>1,502</u>	5,885
Each Additional Member	+390	+300	<del>+((132))</del> <u>150</u>	+495

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-444-0030 Work requirements for persons who are able-bodied adults without dependents (ABAWDS).** (1) ~~((Clients who))~~ Able-bodied adults without dependents (ABAWDs) are age eighteen to fifty and have no dependents. They must, unless determined exempt, participate in specific employment and training activities to receive food assistance.

(2) Nonexempt ~~((clients))~~ ABAWDs who fail to participate ~~((are eligible for no more than three months of food~~

~~assistance in a thirty-six month period))~~ may continue to receive food assistance until September 30, 2010.

(3) ~~((Except as provided in WAC 388-444-0035, a person))~~ Beginning October 1, 2010, an ABAWD is not eligible to receive food assistance for more than three full months in ~~((the))~~ a thirty-six month period ~~((beginning January 1, 1997)), except as provided in WAC 388-444-0035, unless that person:~~

- (a) Works at least twenty hours a week averaged monthly; or
  - (b) Participates in and complies with the requirements of a work program for twenty hours or more per week; or
  - (c) Participates in a workfare program as provided in WAC 388-444-0040.
- (4) A work program is defined as a program under:
- (a) The Job Training Partnership Act (JTPA);
  - (b) Section 236 of the Trade Act of 1974; or
  - (c) A state-approved employment and training program.

**WSR 09-08-087  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-45—Filed March 30, 2009, 3:08 p.m., effective March 30, 2009, 3:08 p.m.]

Effective Date of Rule: Immediately.



Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This emergency regulation is needed to allow additional fishing opportunity for juveniles, seniors, and holders of a department of fish and wildlife disability license. Vance Creek Pond #1 is an "opening day" lake with juvenile, senior, and disabled regulations, and will reopen the last Saturday in April. 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: March 30, 2009.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900J Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.)** Notwithstanding the provisions of WAC 232-28-619, effective immediately through April 5, 2009, juveniles, holders of a senior license, and holders of a Department of Fish and Wildlife disability license may fish in those waters of Vance Creek Pond #1.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective April 6, 2009:

WAC 232-28-61900J      Exceptions to statewide rules—Vance Creek Pond #1: (Grays Harbor Co.)

**WSR 09-08-088**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-42—Filed March 30, 2009, 3:10 p.m., effective April 16, 2009, 12:01 a.m.]

Effective Date of Rule: April 16, 2009, 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.

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

Reasons for this Finding: This regulation is necessary to assure a safe and successful fishing kids event. Trout will be stocked two days prior to the event to acclimate them. Closing the pond prior to the event will ensure there are fish for participants to catch. On the day of the event preregistered kids will be allowed to fish in these netted areas.

The reason for keeping the pond closed after the event is to ensure the safety of the public as well as the event participants while the event is shutting down and equipment and nets are being removed. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 30, 2009.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900H Exceptions to statewide rules—Klineline Pond (Clark Co.)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 16, 2009 through April 18, 2009, it is unlawful to fish in those waters of Klineline Pond, except as provided in this section:

(a) Open to fishing 8:00 a.m. to 3:00 p.m. April 16, 2009, in the netted area to juvenile anglers participating in the Fishing Kid's Event.

(b) Open to fishing 8:00 a.m. to 3:00 p.m. April 18, 2009, in the netted area to juvenile anglers participating in the Fishing Kid's Event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 19, 2009:

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