

**WSR 16-09-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-68—Filed April 6, 2016, 4:04 p.m., effective April 11, 2016]

Effective Date of Rule: April 11, 2016.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

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

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

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

Reasons for this Finding: Preliminary estimates indicate that encounters of Chinook salmon in Marine Area 9 have exceeded preseason expectations. This emergency rule modifies the fisheries to ensure compliance with conservation objectives and agreed-to management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 6, 2016.

Ron Warren  
for J. W. Unsworth  
Director

**NEW SECTION**

**WAC 232-28-62100B Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective April 11 through April 15, 2016, it is unlawful to fish for salmon in Marine Area 9. Unless otherwise amended, all permanent rules remain in effect.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective April 16, 2016:

WAC 232-28-62100B Puget Sound salmon—Saltwater seasons and daily limits.

**WSR 16-09-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-67—Filed April 7, 2016, 3:12 p.m., effective April 10, 2016]

Effective Date of Rule: April 10, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500A; and amending WAC 220-310-195.

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

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

Reasons for this Finding: An emergency rule is needed to open Frank's Pond in Chelan County which is a newly constructed pond and will provide juvenile anglers an exclusive fishing opportunity. 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 7, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-310-19500A Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, it is unlawful to fish in Frank's Pond (Chelan Co.) except as provided in this section:

- (1) Open to juvenile anglers only for fishing April 10, 2016, until further notice.
- (2) Night closure is in effect.
- (3) Daily limit of 2 trout - no size restrictions.
- (4) All other game fish, daily limit 5 - no size restrictions.

**WSR 16-09-007**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-70—Filed April 7, 2016, 5:06 p.m., effective April 8, 2016, 11:59 p.m.]

Effective Date of Rule: April 8, 2016, 11:59 p.m.

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 220-310-20000D; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Closes the salmon season downstream on Bonneville Dam one day earlier than scheduled. The area upstream of Bonneville Dam described above will continue as planned. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Confirms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 27 and April 7, 2016. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries

accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (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.

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 1.

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

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

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

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

Date Adopted: April 7, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-310-20000G Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, effective immediately through May 6, 2016, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

- (1) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

- (2) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 fish may be adults and no more than 1 fish may be an adult Chinook.
- (3) Release all wild Chinook and wild steelhead.
- (4) Salmon minimum size is 12 inches.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. April 8, 2016:

WAC 220-310-20000D Exceptions to statewide rules—  
Columbia River. (16-14)

**WSR 16-09-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-69—Filed April 8, 2016, 11:44 a.m., effective April 9, 2016]

Effective Date of Rule: April 9, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-310-185.

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

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

Reasons for this Finding: An emergency rule is needed as salmon are being released into the upper Cowlitz River for sport harvest opportunity and reintroduction purposes. After being released, the fish tend to temporarily congregate at the release site. Providing a small sanctuary will allow the fish to disperse and reduce the potential for snagging. 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 8, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-310-18500I Freshwater exceptions to statewide rules—Southwest.** Notwithstanding the provisions of WAC 220-310-185, effective April 9, 2016, until further notice, it is unlawful to fish in the waters of the Cowlitz River from the Skate Creek (Franklin) Bridge in Packwood downstream 50 feet. Unless otherwise amended, all permanent rules remain in effect.

**WSR 16-09-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-72—Filed April 11, 2016, 5:17 p.m., effective April 11, 2016, 5:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Yakima River.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-310-19500B; and amending WAC 220-310-195.

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

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

Reasons for this Finding: An emergency rule is needed as the Yakama Nation is tagging up to fifty-five adult smallmouth bass with acoustic (sonic) tags. This is part of a telemetry study tracking bass movements in the lower Yakima River during their spring migration/spawning season. All fish with acoustic tags will be visibly identifiable by an orange "spaghetti" tag inserted at the base of the dorsal fin. Anglers need to be aware that these tagged smallmouth bass have been exposed to a chemical anesthetic, must not be eaten, but should be released during the effective dates above to allow researchers to continue tracking fish movements. Residual anesthetic in tagged fish flesh will dissipate by mid-May and be safe for human consumption under the FDA rules on fish anesthetic use. 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 11, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19500B Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective April 12 through May 13, 2016, all smallmouth bass tagged in the dorsal fin with an orange spaghetti tag must be released in those waters of the Lower Yakima River and Columbia River in the Yakima Delta area near Bateman Island, Benton Co.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective May 14, 2016:

WAC 220-310-19500B Freshwater exceptions to statewide rules—Eastside.

#### **WSR 16-09-027**

#### **EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed April 12, 2016, 3:45 p.m., effective April 12, 2016, 3:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add prior authorization requirements for providers prescribing thickeners to clients younger than one year of age.

Citation of Existing Rules Affected by this Order: Amending WAC 182-554-500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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 Food and Drug Administration (FDA) has issued a warning not to give infants thickeners, particularly those born prematurely, because there is substantive evidence it puts them at risk of necrotizing enterocolitis. The recommendation is supported by American Academy of Pediatrics. This rule change is intended to follow the FDA's warning. The agency held a public hearing for this rule on January 5, 2016. As a result of comments received at the public hearing, the agency is rewriting the rule and will refile the CR-102 and hold another public hearing.

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 1, Repealed 0.

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

Date Adopted: April 12, 2016.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-554-500 Covered enteral nutrition products, equipment and related supplies—Orally administered—Clients twenty years of age and younger only.** (1) The department covers orally administered enteral nutrition products for clients twenty years of age and younger only, as follows:

(a) The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;

(b) The client is able to manage their feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(c) The client meets one of the following clinical criteria:

(i) Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:

(A) Be in a wasting state;

(B) Have a weight-for-length less than or equal to the fifth percentile if the client is three years of age or younger; or

(C) Have a body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or

(II) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or

(D) Have a BMI of:

(I) Less than or equal to twenty-five; and

(II) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(ii) Amino acid, fatty acid, and carbohydrate metabolic disorders.

(A) The client must require a specialized nutrition product; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(iii) Cancer(s).

(A) The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;

(B) The department pays for orally administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and

(C) Providers must follow the department's expedited prior authorization process to receive payment.

(iv) Chronic renal failure.

(A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(v) Decubitus pressure ulcers.

(A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and

(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.

(vi) Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.

(A) The provider must obtain prior authorization to receive payment; and

(B) The client must have:

(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and

(II) A weight-for-length less than or equal to the fifth percentile if the client is two years of age or younger; or

(III) A BMI of:

(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or

(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or

(IV) Have a BMI of:

(aa) Less than or equal to twenty-five; and

(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(vii) Medical conditions (e.g., dysphagia) requiring a thickener.

(A) The client must be older than one year of age and:

(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(B) Providers must follow the (~~department's~~) agency's expedited prior authorization process to receive payment.

(C) If prescribing for a child younger than one year of age, providers must request prior authorization and:

(I) Include clinical documentation that supports the medical necessity of the request; and

(II) Include the report recommending a thickener from a speech therapist or occupational therapist who specializes in dysphagia.

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(I) Client is not eligible for the women, infants, and children (WIC) program; or

(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or

(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: <http://www1.dshs.wa.gov/msa/forms/eforms.html>. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.

**WSR 16-09-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-71—Filed April 14, 2016, 1:07 p.m., effective April 14, 2016, 1:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000C; and amending WAC 220-310-200.

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

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

Reasons for this Finding: This emergency rule establishes the summer-period white sturgeon retention season in

Bonneville Reservoir. A total of one hundred sixty-eight fish remain on the guideline, which allows for a summer retention season. Catch and release is allowed during nonretention periods, except within the May-July sturgeon spawning sanctuary downstream of The Dalles Dam. This emergency rule is consistent with the joint Washington-Oregon action of April 7, 2016, and 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 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, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-310-20000H Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 220-310-200:

(1) June 18 and July 1, 2016, it is permissible to retain white sturgeon between 38-inches minimum and 54-inches maximum fork length caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to sturgeon spawning Sanctuary boundary located 1.8 miles downstream of The Dalles Dam.

(2) Effective immediately until further notice, except for the specific dates described in subsection (1) of this section, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Catch and release is permissible except from May 1 through July 31, 2016 in the sturgeon spawning Sanctuary located from The Dalles Dam downstream 1.8 miles.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000C Exceptions to statewide rules—  
Columbia River sturgeon. (16-13)

**WSR 16-09-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-73—Filed April 14, 2016, 2:23 p.m., effective April 20, 2016]

Effective Date of Rule: April 20, 2016.

Purpose: Amend fishing rules for Sarg Hubbard Pond juvenile fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500C; and amending WAC 220-310-195.

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

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

Reasons for this Finding: This emergency rule is necessary to ensure safe and successful youth fishing events. Five thousand trout will be planted three days prior to the event to acclimate them and ensure they bite well. On April 23, 2016, preregistered kids will be allowed to fish during the 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 14, 2016.

J. W. Unsworth  
 Director

NEW SECTION

**WAC 220-310-19500C Exceptions to statewide rules—Sarg Hubbard Park Reflection Pond).** Notwithstanding the provisions of WAC 220-310-195, effective 12:01 a.m. April 20, through 4:00 p.m. April 23, 2016, it is unlawful to fish in Sarg Hubbard Park Pond, except as provided in the sections below:

(a) Open to fishing 8:00 a.m. to 4:00 p.m. April 23, 2016, by juvenile anglers participating in the Yakima Greenway Association's "Kids' Fish-In" event.

(b) The daily limit is reduced to two trout during the youth fishing event.

**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. April 23, 2016:

WAC 220-310-19500C Exceptions to statewide rules—  
 Sarg Hubbard Park Pond.

**WSR 16-09-040**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-74—Filed April 14, 2016, 2:25 p.m., effective April 29, 2016]

Effective Date of Rule: April 29, 2016.

Purpose: Amend fishing rules for the Yakima River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500D; and amending WAC 220-310-195.

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

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

Reasons for this Finding: Yakama Nation and Washington department of fish and wildlife fishery managers are forecasting a total return of four thousand six hundred ten adult spring Chinook to the Yakima River in 2016 (three thousand one hundred wild and one thousand five hundred ten hatchery fish), representing fifty-five percent of the recent ten year (2006-2015) average adult return of eight thousand three hundred twenty spring Chinook. There are a sufficient number of hatchery salmon returning to open the fishery, but the hatchery adult daily limit has been reduced from two to one fish corresponding to the reduced adult abundance. 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, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19500D Exceptions to statewide rules—Yakima River.** Notwithstanding the provisions of WAC 220-310-195:

(1) Effective April 29 through June 15, 2016; a person may fish for salmon in waters of the Yakima River from the Hwy. 240 bridge in Richland (river mile 2.1) to the Grant Avenue bridge in Prosser (river mile 47.0) approximately 1,000 feet downstream of Prosser Dam. Daily limit of two salmon with up to one adult hatchery Chinook, minimum size 12 inches in length. Release wild adult Chinook. Terminal gear is restricted to two, single (point), barbless hooks with a hook gap from point to shank of 3/4 inch or less when fishing for salmon. Use of bait is allowed.

(2) For the duration of the salmon fishery, the Yakima River adjacent to the USBR Chandler Powerhouse/Pumping Station is closed to all fishing from the WDFW white markers 200 feet downstream of the spillway chute to the power line crossing immediately upstream of the powerhouse.

(3) The Columbia River Salmon/Steelhead Endorsement is required to participate in this fishery, in addition to a freshwater fishing license.

(4) The use of two (2) fishing poles is permitted during the salmon fishery provided the participating angler has purchased a "Two-Pole Endorsement" (in addition to the freshwater fishing license and Columbia River salmon/steelhead endorsement).

#### REPEALER

The following section of the Washington Administrative Code is repealed effective June 16, 2016:

WAC 220-310-19500D Exceptions to statewide rules—  
Yakima River.

**WSR 16-09-042  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-75—Filed April 14, 2016, 4:44 p.m., effective April 14, 2016,  
4:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

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

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 4 and 5. Washington department of health has certified clams from this [these] beach[es] 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 14, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-56-36000P 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, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective 12:01 a.m. April 20 through 11:59 a.m. April 28, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 a.m. April 25 through 11:59 a.m. April 26, 2016, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(3) Effective 12:01 a.m. April 23 through 11:59 a.m. April 23, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 a.m. April 25 through 11:59 a.m. April 26, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(5) It is unlawful to dig for razor clams at any time in the Long 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. April 28, 2016:

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

**WSR 16-09-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-77—Filed April 15, 2016, 1:35 p.m., effective April 16, 2016]

Effective Date of Rule: April 16, 2016.

Purpose: Amend recreational fishing rules for the Chehalis River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000R; and amending WAC 220-310-180.

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

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

Reasons for this Finding: The department of fish and wildlife is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans developed through North of Falcon proceedings. This emergency rule is interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 15, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-310-18000R Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-310-180, effective April 16 through June 30, 2016, it is permissible to fish for salmon in the waters of the Chehalis River from the mouth (Highway 101 Bridge) to the

Highway 6 Bridge in the town of Adna. Daily limit of one salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2016:

WAC 220-310-18000R Freshwater exceptions to statewide rules—Coastal.

**WSR 16-09-050**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-78—Filed April 15, 2016, 1:57 p.m., effective May 4, 2016]

Effective Date of Rule: May 4, 2016.

Purpose: Amend recreational fishing rules for Columbia Park Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500E; and amending WAC 220-310-195.

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

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

Reasons for this Finding: This emergency rule is necessary to ensure successful youth fishing events in Columbia Park Pond. Several thousand trout will be planted three days prior to the event to acclimate the fish and ensure they bite well. During the two events only preregistered kids will be allowed to fish. 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 15, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-310-19500E Exceptions to statewide rules—Columbia Park Pond.** Notwithstanding the provisions of WAC 220-310-195, effective 12:01 a.m. May 4, through 3:00 p.m. May 7, 2016, it is unlawful to fish in Columbia Park Pond (Kennewick), except as provided in the subsections below:

(1) Open to fishing 5:00 p.m. to 7:00 p.m. May 6, 2016, by juvenile anglers participating in the "Special Needs Youth Fishing Event".

(2) Open to fishing 9:00 a.m. to 3:00 p.m. May 7, 2016, by juvenile anglers participating in the "Kids' Fishing Day" event.

(3) The daily limit is three trout during the two youth fishing events.

REPEALER

The following section of the Washington Administrative Code is repealed effective 3:01 p.m. May 7, 2016:

WAC 220-310-19500E Exceptions to statewide rules—  
Columbia Park Pond.

**WSR 16-09-066  
EMERGENCY RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed April 18, 2016, 10:20 a.m., effective April 18, 2016, 10:20 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These rules will support ESHB 2746 and the following decision by the Centers for Medicare and Medicaid Services (CMS): "CMS has approved an amendment that includes Wellness Education to the Individual and Family Services 1915(c) waiver. The Individual and Families Services (IFS) Waiver provides home and community-based services targeted to individuals as an alternative to placement in an Intermediate Care Facility for individuals with Intellectual Disabilities. Wellness Education is meant to provide wellness information to IFS Waiver participants to assist them in achieving goals identified during their person-centered planning process."

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-2280 and 388-845-2285.

Statutory Authority for Adoption: RCW 71A.12.030, 34.05.350 (1)(b).

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

Reasons for this Finding: ESHB 2746 requires the department of social and health services to refinance medicare personal care services under the community first choice (CFC) option and allows for optional services to be included within the benefit package. The wellness education program provides an access point to CFC services for many clients

that would otherwise not qualify. This is consistent with the intent of HR [ESHB] 2746.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 14, 2016.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

**WAC 388-845-2280 What is wellness education?** Wellness education provides you with monthly individualized printed educational materials designed to assist you in managing health related issues and achieving wellness goals identified in your person-centered service plan that address your health and safety issues. Individualized educational materials are developed by the state, other content providers and the contracted wellness education provider. This service is available on the Basic Plus, individual and family services, and Core Waivers.

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

**WAC 388-845-2285 Are there limits to wellness education?** Wellness education is a once a month service. In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210. The dollar amount for your individual and family services (IFS) waiver annual allocation defined in WAC 388-845-0230 limits the amount of service you may receive.

**WSR 16-09-072**

**EMERGENCY RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed April 18, 2016, 2:05 p.m., effective April 18, 2016, 2:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-107-0001, 388-107-0020, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140,

388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, 388-107-1000, and 388-107-1190 in order to address Center for Medicare/Medicaid Services (CMS) home and community-based services (HCBS) and stakeholder concerns with implementation of the requirements stated therein.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-107-0930; and amending WAC 388-107-0001, 388-107-0020, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, 388-107-1000, and 388-107-1190.

Statutory Authority for Adoption: RCW 70.97.230.

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: After receiving input from stakeholders, DSHS's residential care services has revised chapter 388-107 WAC to operationalize the enhanced services facilities (ESF) program.

**Immediate Adoption is Necessary for Public Safety and General Welfare:** The Washington state operating budget directs the department to implement chapter 70.97 RCW, which requires the establishment of ESF. ESFs are intended to relieve pressure on institutional mental health settings such as eastern and western state hospitals. If certain patients are relocated to ESFs, more beds will be available to those who need an institutional level of mental health care.

Due to shortage of beds at evaluation and treatment centers and western and eastern state hospitals, some patients have been kept in nonpsychiatric acute care hospital settings such as emergency rooms and medical surgical units. In the case known as *In re: the Detention of D. W., et al. v. Department of Social and Health Service*, the Washington state supreme court found these placements, known as "psychiatric boarding," to be unconstitutional. In order to comply with *D. W.*, DSHS needs to immediately develop alternatives to institutional mental health settings in order to reduce the need for psychiatric boarding. Therefore, adoption of these rules, which will allow ESFs to become licensed and begin operating, is an urgent and time-sensitive matter of public safety and general welfare.

**Immediate Adoption is Necessary to Receive Federal Funds:** In order to qualify for federal matching funds, the ESF program must conform to federal CMS HCBS requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that pay-

ments for ESF services will qualify for federal funding under the HCBS requirements, the proposed rule amendments need to be adopted immediately.

Initial public notice (CR-101) was filed under WSR 15-1-041 [15-10-041].

In order to qualify for federal matching funds, the ESF program must conform to federal CMS HCBS requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services qualify for federal funding under the HCBS requirements, the proposed rule amendments were adopted in an emergency filing. We are currently refileing this emergency rule due to the expiration (April 20, 2016) of our previous filing WSR 16-01-160.

The public hearing was held on January 26, 2016, and we have been responding to comments and stakeholder feedback in response to the rule changes. It is anticipated that our permanent rule filing (CR-103P) will be completed by the end of May 2016, so that permanent rules will be in place by the end of June 2016.

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 31, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 31, Repealed 1.

Date Adopted: April 14, 2016.

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 16-11 issue of the Register.

**WSR 16-09-087**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-79—Filed April 19, 2016, 10:53 a.m., effective April 23, 2016]

Effective Date of Rule: April 23, 2016.

Purpose: Amend recreational fishing rules for Baker Lake.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000Z; and amending WAC 220-310-190.

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

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

Reasons for this Finding: As part of a study to evaluate the collection efficiency of the new juvenile fish collection facility on trout, fish up to ten inches in length with pit tags have been released into the lake. This emergency rule is needed to protect the study fish. Anglers are asked to handle and release any trout caught smaller than ten inches with extreme care. 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 19, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19000Z Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190 and WAC 220-56-510, effective April 23 through June 30, 2016, in those waters of Baker Lake the minimum size for all trout is 10 inches in length.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2016:

WAC 220-310-19000Z Freshwater exceptions to statewide rules—Puget Sound.

**WSR 16-09-108**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed April 19, 2016, 3:37 p.m., effective April 19, 2016, 3:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending this rule to clarify that adoption support and foster care alumni can opt out of the apple health foster care program for any reason.

Citation of Existing Rules Affected by this Order: Amending WAC 182-538-150 Apple health foster care program.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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: WAC 182-538-150 (3)(b) incorrectly cites to WAC 182-538-130. The rule must clarify that adoption support and foster care alumni can opt out of the apple health foster care program for any reason.

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 0.

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

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

Date Adopted: April 19, 2016.

Wendy Barcus  
Rules Coordinator

#### AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

##### **WAC 182-538-150 Apple health foster care program.**

(1) Unless otherwise stated in this section, all of the provisions of chapter 182-538 WAC apply to apple health foster care (AHFC).

(2) The following sections of chapter 182-538 WAC do not apply to AHFC:

- (a) WAC 182-538-068;
- (b) WAC 182-538-071;
- (c) WAC 182-538-096; and
- (d) WAC 182-538-111.

(3) Enrollment in AHFC is voluntary for eligible individuals. The agency will enroll eligible individuals in the single MCO that serves children and youth in foster care and adoption support, and young adult alumni of the foster care system.

(a) The agency will not enroll a client in AHFC or will end an enrollee's enrollment in AHFC when the client has, or becomes eligible for, TRICARE or any other third-party health care coverage that would:

(i) Require the agency to either exempt the client from enrollment in managed care; or

(ii) End the enrollee's enrollment in managed care.

(b) An AHFC enrollee may request exemption from enrollment or termination of enrollment in AHFC without cause if the client is in the adoption support or young adult alumni programs (~~under~~). WAC 182-538-130 does not apply to these requests.

(4) In addition to the scope of medical care services in WAC 182-538-095, AHFC coordinates health care services for enrollees with the department of social and health services community mental health system and other health care systems as needed.

(5) The agency sends written information about covered services when the individual becomes eligible to enroll in AHFC and at any time there is a change in covered services. In addition, the agency requires MCOs to provide new enrollees with written information about:

(a) Covered services;

(b) The right to grievances and appeals through the MCO; and

(c) Hearings through the agency.