

**WSR 10-04-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-16—Filed January 22, 2010, 3:15 p.m., effective January 22, 2010, 3:15 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-04000E and 220-33-04000F; and amending WAC 220-33-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sets the 2010 commercial smelt season in the Cowlitz River. The regulations are consistent with Level 1 fisheries in the "Washington and Oregon Eulachon Management Plan for the Columbia River." Abundance and productivity indicators project a weak return of smelt for 2010, and the minimal fishing plan adopted serves as a test fishery to monitor run strength and collect biological data. There is insufficient time to promulgate permanent regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: January 22, 2010.

Philip Anderson  
 Director

**NEW SECTION**

**WAC 220-33-04000F Smelt—Areas and seasons.** Notwithstanding the provisions of WAC 220-33-040, effective immediately through March 31, 2010, the Columbia River and Washington tributaries are closed to fishing for smelt except under the following provisions:

- 1) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5)  
**Dates:** Mondays and Thursdays, 7:00 a.m. to 2:00 p.m.  
**Gear:** Gillnets, dipnets and trawl nets.  
**Allowable sales:** Smelt.

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

- 2) **Area:** Cowlitz River downstream of Peterson's Eddy  
**Dates:** Sundays, February 7, 14, 21, and 28; and Wednesdays, February 3, 10, 17, and 24.

**Hours:** 7:00 p.m. to 10:00 p.m. each day.

**Gear:** Dipnets

**Allowable sales:** Smelt.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-33-04000E Smelt—Areas and seasons.  
 (09-274)

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

WAC 220-33-04000F Smelt—Areas and seasons.

**WSR 10-04-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)  
 (Division of Child Support)

[Filed January 27, 2010, 11:10 a.m., effective January 28, 2010]

Effective Date of Rule: January 28, 2010.

Purpose: This second set of emergency rules is identical to the emergency rules filed as WSR 09-20-030.

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

The division of child support (DCS) filed emergency rules under WSR 09-20-030 in order to implement this legislation by October 1, 2009. In addition, DCS began the rule-making process by filing a CR-101, Preproposal notice of inquiry, for each of the bills: The CR-101 for ESHB 1794 was filed as WSR 09-10-046, and the CR-101 for SHB 1845 was filed as WSR 09-14-075. DCS determined that, in order to make all the required changes under both ESHB 1794 and SHB 1845, it would be necessary to adopt one set of rules which covered both bills.

Working with stakeholders and other partners, we discovered several places where the emergency rules needed improvement. Unfortunately, we are still in the process of redrafting and revising, so we are adopting this second emergency rule filing to preserve the *status quo*. DCS anticipates

that when we file the CR-102, Notice of proposed rule making, the proposed rules will differ from the emergency rules in several respects. DCS continues the regular rule-making process and will adopt final rules as soon as possible.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3312 The division of child support serves a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support to establish a fixed dollar amount owed under a child support order, 388-14A-3315 When DCS serves a notice of support debt ~~((of))~~, notice of support owed ~~((of))~~, notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support, we notify the other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide ~~((health insurance))~~ medical support for my children, what do I have to do?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ~~((health insurance coverage))~~ medical support?, 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS uses the national medical support notice to enforce an obligation to provide health insurance coverage, 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?, 388-14A-4175 ~~((Is an employer))~~ Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration?, 388-14A-5002 How does DCS distribute support collections in a nonassistance case?, 388-14A-5003 How does DCS distribute support collections in an assistance case?, 388-14A-5004 How does DCS distribute support collections in a former assistance case?, 388-14A-5005 How does DCS distribute federal tax refund offset collections?, 388-14A-5006 How does DCS distribute support collections when the paying parent has more than one case?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation and 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing together?; and new section WAC 388-14A-4111 When may

DCS decline a request to enforce a medical support obligation?

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

Other Authority: Not applicable.

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

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

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 28, Repealed 0.

Date Adopted: January 25, 2010.

Don Goldsby, Manager  
Rules and Policies Assistance Unit

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-06 issue of the Register.

**WSR 10-04-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-17—Filed January 27, 2010, 5:02 p.m., effective January 28, 2010, 12:01 p.m.]

Effective Date of Rule: January 28, 2010, 12:01 p.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 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: January 27, 2010.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-56-3600C 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 p.m. January 28, 2010 through 11:59 p.m. January 31, 2010, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. January 29, 2010 through 11:59 p.m. January 31, 2010, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. January 30, 2010 through 11:59 p.m. January 31, 2010, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. 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 a.m. February 1, 2010:

WAC 220-56-3600C      Razor clams—Areas and seasons.

#### **WSR 10-04-051**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

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

(Health and Recovery Services Administration)

[Filed January 29, 2010, 8:49 a.m., effective January 29, 2010, 8:49 a.m.]

Effective Date of Rule: Immediately.

Purpose: These amendments are required to comply with ESSB 5892 which authorizes state purchased health care programs to maximize appropriate prescription drug use in a cost-effective manner.

Citation of Existing Rules Affected by this Order: Amending WAC 388-530-4100 and 388-530-4150.

Statutory Authority for Adoption: RCW 74.04.050, 74.09.700, 74.08.090.

Other Authority: Chapter 575, Laws of 2009 (ESSB 5892).

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

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislative mandate in ESSB 5892. This emergency filing is necessary to continue the current emergency rules filed as WSR 09-20-044 on September 30, 2009, while the department reviews comments received from the public hearing held on December 22, 2009. Following this, the department plans to formally adopt the permanent rules in February 2010.

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

Date Adopted: January 20, 2010.

Don Goldsby, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

**WAC 388-530-4100 Washington preferred drug list (PDL).** Under RCW 69.41.190 and 70.14.050, the department and other state agencies cooperate in developing and maintaining the Washington preferred drug list.

(1) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(3) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL that have been studied by the evidence-based practice center(s) and reviewed by the P&T committee and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as written (DAW) rules under WAC 388-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug which the department determines as covered is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met department established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) Combination drugs that have been studied by the evidence-based practice center and have been reviewed by the P&T committee may be included in the Washington PDL.

(11) When a brand name drug has been reviewed by the P&T committee, the department may immediately designate an available, less expensive, equally effective, generic equivalent as a preferred drug.

(12) The dispensing of a brand name drug in a drug class on the Washington PDL as a client's first choice of treatment within that therapeutic class may be subject to restrictions under WAC 388-530-4125 and 388-530-4150(8).

NEW SECTION

**WAC 388-530-4125 Generics first for a client's first course of treatment.** The department uses point-of-sale (POS) claim messaging to communicate to pharmacies to use a preferred generic drug for the client's first choice of treatment in specific drug classes.

(1) The department may require preferred generic drug(s) on the Washington preferred drug list (PDL) be used before any brand name drugs for a client's first course of treatment within that therapeutic class of drugs, when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition; and

(b) The drug use review (DUR) board established under WAC 388-530-4000 has reviewed the drug class and recommended to the department that the drug class is appropriate to require generic drugs as a client's first choice of treatment.

(2) For drug classes selected by the department which meet the criteria of subsection (1) of this section, only preferred generic drugs are covered for a client's first course of treatment, except as identified in subsection (3) of this section.

(3) Endorsing practitioners' prescriptions written "Dispense as written (DAW)" for preferred and nonpreferred brand name drugs in the specific drug classes on the Washington PDL reviewed by the DUR board will be subject to authorization to establish medical necessity as defined in WAC 388-500-0005.

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

**WAC 388-530-4150 Therapeutic interchange program (TIP).** This section contains the department's rules for the endorsing practitioner therapeutic interchange program (TIP). TIP is established under RCW 69.41.190 and 70.14.050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The therapeutic interchange program (TIP) applies only to drugs:

(a) Within therapeutic classes on the Washington PDL;

(b) Studied by the evidence-based practice center(s);

(c) Reviewed by the pharmacy and therapeutics (P&T) committee; and

(d) Prescribed by an endorsing practitioner.

(2) TIP does not apply:

(a) When the ~~((pharmacy and therapeutics (P&T))~~ committee determines that TIP does not apply to the therapeutic class on the PDL; or

(b) To a drug prescribed by a nonendorsing practitioner.

(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner under the provisions of chapter 182-50 WAC and RCW 69.41.190(2).

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's pop-

ulation or indication, and indicates that substitution is permitted, the pharmacist must:

(a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) With the exception of subsection (7) and (8) of this section, when an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The pharmacist dispenses the nonpreferred drug as prescribed; and

(c) The department does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.

(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage(~~(-and samples)~~)):

(a) Antipsychotic;

(b) Antidepressant;

(c) Antiepileptic;

~~(d)~~ Chemotherapy;

~~((d))~~ (e) Antiretroviral;

~~((e))~~ (f) Immunosuppressive; or

~~((f))~~ (g) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

(7) The department may impose nonendorsing status on an endorsing practitioner only under the following circumstances:

(a) The department runs three quarterly reports demonstrating that, within any therapeutic class of drugs on the Washington PDL, the endorsing practitioner's frequency of prescribing DAW varies from the prescribing patterns of the endorsing practitioner's department-designated peer grouping with a ninety-five percent confidence interval; and

(b) The medical director has:

(i) Delivered by mail to the endorsing practitioner the quarterly reports described in subsection (7)(a) of this section which demonstrate the endorsing practitioner's variance in prescribing patterns; and

(ii) Provided the endorsing practitioner an opportunity to explain the variation in prescribing patterns as medically necessary as defined under WAC 388-500-0005; or

(iii) Provided the endorsing practitioner two calendar quarters to change his or her prescribing patterns to align with those of the department-designated peer groupings.

(c) The nonendorsing status restrictions imposed under this section will remain in effect until the quarterly reports demonstrate that the endorsing practitioner's prescribing patterns no longer vary in comparison to his or her department designated peer-grouping over a period of four calendar quarters, with a ninety-five percent confidence interval.

(8) For a client's first course of treatment within a therapeutic class of drugs, the endorsing practitioner's option to write DAW does not apply when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition;

(b) The drug use review (DUR) board established under WAC 388-530-4000 has reviewed the drug class and recommended to the department that the drug class is appropriate to require generic drugs as a client's first course of treatment.

(9) In accordance with WAC 388-501-0165, the department will request and review the endorsing practitioner's medical justification for preferred and nonpreferred brand name drugs and nonpreferred generic drugs for the client's first course of treatment.

### WSR 10-04-055

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 29, 2010, 8:57 a.m., effective February 1, 2010]

Effective Date of Rule: February 1, 2010.

Purpose: These amendments are necessary to meet the legislative requirements of sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 for durable medical equipment. Specifically, the department is eliminating coverage for transcutaneous electrical neural stimulation (TENS) devices and supplies (including battery chargers and supplies for client-owned devices) for in-home use and the instruction in the application of TENS.

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

Statutory Authority for Adoption: RCW 74.08.090.

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

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

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for durable medical equipment for fiscal years 2010-2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: January 20, 2010.

Don Goldsby, Manager  
Rules and Policies Assistant Unit

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-05 issue of the Register.

### WSR 10-04-056

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 29, 2010, 8:59 a.m., effective February 1, 2010]

Effective Date of Rule: February 1, 2010.

Purpose: The recent passage of the federal Children's Health Insurance Act of 2009 requires amendment to department rules regarding newborn eligibility for medical assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-505-0210.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.08.090; Apple Health for Kids Act (ESHB 2128); and Children's Health Insurance Act of 2009 (42 U.S.C. 1305).

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: Adopting this emergency rule will allow the department to extend medical assistance to newborns who are not eligible under the current rule, while the department completes the permanent rule-making process begun under WSR 10-03-027.

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

Date Adopted: January 20, 2010.

Don Goldsby, Manager  
Rules and Policies Assistance Unit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Noncitizen children under the age of nineteen, who do not meet qualified alien status as described in WAC 388-424-0006, are eligible for free state-funded CN coverage when they meet the following criteria:

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

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

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or qualified aliens as described in WAC 388-424-0001 and 388-424-0006 (1), (4), and (5) are eligible for premium-based federally-matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

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

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

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

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

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

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

(5) Noncitizen children under the age of nineteen, who do not meet qualified alien status as described in WAC 388-424-0006, are eligible for premium-based state-funded CN coverage when they meet the following criteria:

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

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

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

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

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

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

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

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

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

~~((8))~~ (8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility requirements for residency, social security number, and citizenship

are eligible for federally-matched CN medicaid coverage through the month of their:

(a) Eighteenth birthday;

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

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

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

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

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

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

~~((11))~~ (11) Children under age of nineteen may also be eligible for:

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

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

(c) SSI-related MN if they:

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

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

~~((12))~~ (12) Children who are ineligible for ~~((other programs included in))~~ apple health for kids may be eligible for the alien ~~((emergency))~~ medical program ~~((AEM))~~ if they meet the following criteria:

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

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

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

(d) They ~~((are disqualified from receiving))~~ have income less than three-hundred percent FPL, but do not qualify for premium-based coverage as described in subsection ~~((4))~~ (5) of this section because of creditable coverage or nonpayment of premiums.

~~((13))~~ (13) Except for a ~~((client))~~ child described in subsection ~~((6))~~ (7), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any ~~((children's healthcare))~~ apple health for kids program.

#### WSR 10-04-062

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 10-18—Filed January 29, 2010, 3:36 p.m., effective February 3, 2010, 8:00 a.m.]

Effective Date of Rule: February 3, 2010, 8:00 a.m.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000M; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.70.430.

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: Daily catch rates show that an increase in effort is necessary to achieve harvest objectives. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 29, 2010.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-04000Q Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040, effective 8:00 a.m. February 3, 2010 until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management Region 1 (which includes Marine Fish Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B).

The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection in Crab Management Region 1.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. February 3, 2010:

|                   |   |
|-------------------|---|
| WAC 220-52-04000M | Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (09-263) |
|-------------------|---|

#### **WSR 10-04-063**

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

[Order 10-18—Filed January 29, 2010, 3:36 p.m., effective February 1, 2010]

Effective Date of Rule: February 1, 2010.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchins on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to an adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 29, 2010.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-07300M Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective February 1, 2010 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 3, 4, 6, and 7 are open seven days per week.



(2) Red sea urchins: Sea Urchin Districts 1, 2, and 4 are open seven days per week.

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

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

#### REPEALER

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

WAC 220-52-07300L Sea urchins. (10-12)

**WSR 10-04-064**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-20—Filed January 29, 2010, 3:36 p.m., effective February 1, 2010]

Effective Date of Rule: February 1, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100A; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Limiting vessel landings amounts for proposed harvest opening dates in Sea Cucumber District 2 is necessary to ensure that the area harvest quota share amount is not exceeded. 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: January 29, 2010.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-07100B Sea cucumbers.** Notwithstanding the provisions of WAC 220-52-071, effective February 1, 2010, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 5 seven days a week.

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

(3) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2 on February 1 and 2, 2010, only. The maximum total combined vessel landings amount for February 1 and 2, 2010, for Sea Cucumber District 2 shall not exceed 1,500 pounds of split-drained sea cucumber for each valid designated sea cucumber vessel.

#### REPEALER

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

WAC 220-52-07100A Sea cucumbers. (09-225)

**WSR 10-04-097**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-21—Filed February 2, 2010, 3:43 p.m., effective February 2, 2010, 3:43 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Kendall Creek Hatchery has met hatchery winter steelhead broodstock needs. 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 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: February 2, 2010.

Joe Stohr  
for Philip Anderson  
Director

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: February 3, 2010.

Alan R. Lynn  
Rules Coordinator

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900E Exceptions to statewide rules—North Fork Nooksack River. (09-252)

**AMENDATORY SECTION** (Amending WSR 10-02-025, filed 12/29/09, effective 1/1/10)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year (~~(2009)~~) 2010, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is 7.53 percent; and
- (2) The property tax component for each county is:

| COUNTY       | PERCENT | COUNTY       | PERCENT |
|--------------|---------|--------------|---------|
| Adams        | 1.22    | Lewis        | 0.90    |
| Asotin       | 1.25    | Lincoln      | 1.15    |
| Benton       | 1.15    | Mason        | 0.90    |
| Chelan       | 0.95    | Okanogan     | 0.94    |
| Clallam      | 0.83    | Pacific      | 1.14    |
| Clark        | 1.01    | Pend Oreille | 0.86    |
| Columbia     | 1.09    | Pierce       | 1.09    |
| Cowlitz      | 1.03    | San Juan     | 0.50    |
| Douglas      | 0.95    | Skagit       | 0.90    |
| Ferry        | 0.89    | Skamania     | 0.79    |
| Franklin     | 1.34    | Snohomish    | 0.91    |
| Garfield     | 1.12    | Spokane      | 1.13    |
| Grant        | 1.22    | Stevens      | 0.94    |
| Grays Harbor | 1.08    | Thurston     | 0.99    |
| Island       | 0.69    | Wahkiakum    | 0.79    |
| Jefferson    | 0.79    | Walla Walla  | 1.14    |
| King         | 0.88    | Whatcom      | 0.94    |
| Kitsap       | 0.90    | Whitman      | 1.27    |
| Kittitas     | 0.73    | Yakima       | 1.12    |
| Klickitat    | 0.84    |              |         |

**WSR 10-04-098**

**EMERGENCY RULES**

**DEPARTMENT OF REVENUE**

[Filed February 3, 2010, 8:13 a.m., effective February 3, 2010, 8:13 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to provide county assessors with the rate of interest and property tax component used in valuing farm and agricultural land classified under chapter 84.34 RCW (the open space program).

This rule was recently amended to provide the information for assessment year 2010 (WSR 10-02-025). This amendment did not, however, correctly identify 2010 as the assessment year to which the values apply. The department has amended this rule on an emergency basis to correct this oversight. There is no change to the rate of interest and property tax component values.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.

Statutory Authority for Adoption: RCW 84.34.065 and 84.34.141.

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 rule needs to be amended immediately so that county assessors can accurately determine the true and fair value of farm and agricultural land.

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