

WSR 07-16-023
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 20, 2007, 9:32 a.m., effective July 22, 2007]

Effective Date of Rule: July 22, 2007.

Purpose: The Washington state legislature has adopted chapter 143, Laws of 2007 (SSB 5244), which implements changes required by the Federal Deficit Reduction Act of 2005 (DRA). The division of child support (DCS) is developing new and amended rules as required in order to allow the Washington child support program to comply with the DRA under our state plan under Title IV-D of the federal Social Security Act. DCS has already filed the preproposal statement of inquiry (WSR 07-10-116) to start the regular rule-making process for these rules. The draft rules will soon go out for review and DCS plans to file the CR-102, notice of proposed rule making, as soon as the review is over (we anticipate filing the CR-102 in July or August of 2007). These emergency rules are necessary until the regular rule-making process is completed.

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-1025 What are the responsibilities of the division of child support?, 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?, 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue, 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity, 388-14A-3200 How does DCS determine my support obligation?, 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-3315 When DCS serves a notice of support debt or notice of support owed or notice of support owed for unreimbursed medical expenses, we notify the ~~((custodial parent and/or the payee under 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-3320 What happens at a hearing on a notice of support owed?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do?, 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4122 What kind of information is included in the National Medical Support Notice?, 388-14A-4124 Who are the parties involved with the National Medical Support Notice?, 388-14A-4125 What must an employer do after receiving a National Medical Support Notice?, 388-14A-4130 What must a plan administrator do after receiving a National Medical Support Notice from the division of child support?, 388-14A-4135 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent has health

insurance but the children are not included in the coverage?, 388-14A-4140 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent is eligible for health insurance but is not yet enrolled?, 388-14A-4143 What must the plan administrator do when the employer provides health insurance but the ~~((noncustodial))~~ obligated parent is not yet eligible for coverage?, 388-14A-4145 What must the plan administrator do when the insurance plan in which the ~~((noncustodial))~~ obligated parent is enrolled does not provide coverage which is accessible to the children?, 388-14A-4150 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent has more than one family?, 388-14A-4160 Are there any limits on the amount ~~((a noncustodial))~~ an obligated parent may be required to pay for health insurance premiums?, 388-14A-4175 Is an employer ~~((obligated))~~ 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 ~~((medical assistance))~~ health and recovery services administration?, 388-14A-5000 How does the division of child support distribute support payments?, 388-14A-5002 How does DCS distribute support money in a nonassistance case?, 388-14A-5005 How does DCS distribute intercepted federal income tax refunds?, 388-14A-5100 What kind of distribution notice does the division of child support send?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation, 388-14A-6400 The division of child support's grievance and dispute resolution method is called a conference board and 388-14A-6415 Scope of authority of conference board chair defined; and new sections WAC 388-14A-2200 When does DCS charge a twenty-five dollar annual fee on a child support case?, 388-14A-3312 The division of child support serves a notice of support owed for unreimbursed medical expenses to establish a fixed dollar amount owed under a child support order, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, and 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide health insurance coverage?

Statutory Authority for Adoption: Sections 1, 2, 3, 4, 5, 7, 8, 9, chapter 143, Laws of 2007.

Other Authority: Public Law 109-171 (the Deficit Reduction Act of 2005).

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: DCS must have rules in effect under chapter 143, Laws of 2007 (SSB 5244), which implement the federal Deficit Reduction Act of 2005, in order to remain in compliance with its state plan under Title IV-D of the federal Social Security Act, July 22, 2007, or risk loss of federal funds for noncompliance.

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 4, Amended 33, 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 4, Amended 33, Repealed 0.

Date Adopted: July 11, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state. In Washington, this is DCS.

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or "public assistance" means cash assistance under the temporary assistance for needy families (TANF) program, the aid for families with dependent children (AFDC) program, federally-funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the twenty-five dollar annual fee required by the federal deficit reduction act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and "recipient" means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Birth costs" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or "current and future support" means the amount of child support which is owed for each month.

"Custodial parent" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

"Department" means the Washington state department of social and health services (DSHS).

"Dependent child" means a person:

- (1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;
- (2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;
- (3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Earnings" means compensation paid or payable for personal service. Earnings include:

- (1) Wages or salary;
- (2) Commissions and bonuses;
- (3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;
- (4) Disability payments under Title 51 RCW;
- (5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;
- (6) Gains from capital, labor, or a combination of the two; and
- (7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

~~**"Health care costs":**~~

~~(1) For the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, means medical, dental and optometrical expenses; and~~

~~(2) For the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical, dental and optometrical costs stated as a fixed dollar amount by a support order.)~~

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical expenses" for the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means:

• Medical costs incurred on behalf of a child, which includes medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, prescribed medical equipment, pharmacy products, preventive care, mental health care and physical therapy;

• Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;

• Dental and optometrical costs incurred on behalf of a child; and

• Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" means either or both:

(1) ~~((Health care costs stated as a fixed dollar amount in a support order))~~ Medical expenses; and

(2) Health insurance coverage for a dependent child.

"National Medical Support Notice" or "NMSN" is a federally-mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. Also called the NCP. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Obligated parent" means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

(1) Directly benefits the dependent child; and

(2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or "PSO" means a case on which the division of child support's activities are limited to

recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrearages" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including health care costs, medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, (~~(medical support)~~) enforcement of medical expenses, health insurance, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, (~~(health care costs)~~) medical expenses, birth costs, and child care or special child rearing expenses.

"TANF" means the temporary assistance for needy families (TANF) program.

"Temporarily assigned arrearages" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy

families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Uninsured medical expenses":

(1) For the purpose of enforcing support obligations under RCW 26.23.110, means

(a) Medical expenses not paid by insurance for medical dental and optometrical costs incurred on behalf of a child; and

(b) Copayments, or deductibles incurred on behalf of a child; and

(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:

(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or

(b) The premium exceeds the maximum limit required for enrollment in the support order.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, for which that parent claims the obligated parent owes a percentage share under a child support order, which percentage is stated in the child support order itself, not just in the worksheets.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 01-24-080, filed 12/3/01, effective 1/3/02)

WAC 388-14A-1025 What are the responsibilities of the division of child support? (1) The division of child support (DCS) provides support enforcement services when:

(a) The department of social and health services pays public assistance or provides foster care services;

(b) A former recipient of public assistance is eligible for services, as provided in WAC 388-14A-2000 (2)(c);

(c) A custodial parent (CP) or noncustodial parent (NCP) requests nonassistance support enforcement services under RCW 74.20.040 and WAC 388-14A-2000;

(d) A support order or wage assignment order under chapter 26.18 RCW directs the NCP to make support payments through the Washington state support registry (WSSR);

(e) A support order under which there is a current support obligation for dependent children is submitted to the WSSR;

(f) A former custodial parent (CP) requests services to collect a support debt accrued under a court or administrative support order while the child(ren) resided with the CP;

(g) A child support enforcement agency in another state or foreign country requests support enforcement services; or

(h) A child support agency of an Indian tribe requests support enforcement services.

(2) DCS takes action under chapters 26.23 and 74.20A RCW to establish, enforce and collect child support obligations.

(a) DCS refers cases to the county prosecuting attorney or attorney general's office when judicial action is required.

(b) If DCS has referred a case to the county prosecuting attorney or attorney general's office and the CP has been granted good cause level A, DCS does not share funding under Title IV-D for any actions taken by the prosecutor or attorney general's office once DCS advises them of the good cause finding.

(3) DCS does not take action on cases where the community services office (CSO) has granted the CP good cause not to cooperate under WAC 388-422-0020, when the CSO grants "level A good cause." If the CSO grants "level B good cause," DCS proceeds to establish and/or enforce support obligations but does not require the CP to cooperate with DCS. WAC 388-14A-2065 and 388-14A-2070 describe the way DCS handles cases with good cause issues.

(4) DCS establishes, maintains, retains and disposes of case records in accordance with the department's records management and retention policies and procedures adopted under chapter 40.14 RCW.

(5) DCS establishes, maintains, and monitors support payment records.

(6) DCS receives, accounts for and distributes child support payments required under court or administrative orders for support.

(7) DCS charges and collects fees for services as required by federal and state law regarding the Title IV-D child support enforcement program.

(8) DCS files a satisfaction of judgment when we determine that a support obligation is either paid in full or no longer legally enforceable. WAC 388-14A-2099 describes

the procedures for filing a satisfaction of judgment. WAC 388-14A-2099(4) describes how DCS determines a support obligation is satisfied or no longer legally enforceable.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2000 Who can receive child support enforcement services from the division of child support?

(1) The division of child support (DCS) provides payment processing and records maintenance services (called "payment services only") to parties to a court order who are not receiving a public assistance grant when:

(a) A Washington superior court order, tribal court order, administrative order, or wage assignment order under chapter 26.18 RCW directs payments through DCS or through the Washington state support registry (WSSR);

(b) The custodial parent (CP) of a dependent child or a noncustodial parent (NCP) requests payment services only, provided that:

(i) An NCP's request for payment services only may not cause a reduction of service from the level of service provided under section (2) of this section; and

(ii) The support obligation is set by a Washington state superior court order, tribal court order, administrative order or wage assignment order, directing payment to DCS or to WSSR.

(2) DCS provides full support enforcement services under Title IV-D of the social security act to custodial parents or noncustodial parents who are not receiving a public assistance grant when:

(a) The custodial parent or former physical custodian of a child requests support enforcement services;

(b) The noncustodial parent of a dependent child requests support enforcement services;

(c) An NCP submits a support order for inclusion in or a support payment to the WSSR, together with an application for support enforcement services;

~~((d))~~ (d) A public assistance recipient stops receiving a cash grant under the temporary assistance for needy families program;

~~((e))~~ (e) The department provides Medicaid-only benefits to a CP on behalf of a dependent child, unless the recipient of the Medicaid-only benefits declines support enforcement services not related to paternity establishment, medical support establishment or medical support enforcement; or

~~((f))~~ (f) A man requests paternity establishment services alleging he is the father of a dependent child.

(3) DCS provides payment processing, records maintenance, paternity establishment, medical support establishment, and medical support enforcement services when a recipient of Medicaid-only benefits declines support enforcement services in writing.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?

(1) If you are not receiving public assistance, you can apply for support enforcement services. Your case is called a non-

assistance case. A nonassistance case receives the same level of services as a case that was opened because of the payment of public assistance.

(2) Generally, the person applying for nonassistance support enforcement services is the custodial parent or former custodial parent of a child. However, the noncustodial parent may apply for services as well, as provided in WAC 388-14A-2000 (2)(b), ~~(c)~~ and ~~((e))~~ (f).

(3) A person wishing to apply for nonassistance support enforcement services must submit a written application for support enforcement services except as provided in WAC 388-14A-2000 (2)~~((e))~~ (d); and

(a) Have or have had physical custody of the child for whom support is sought, or for whom a support debt has accrued, or be the person with whom the child resided the majority of the time for which support is sought; or

(b) Be the noncustodial parent.

(4) The applicant must:

(a) Give consent for the division of child support (DCS) to take an assignment of earnings from the noncustodial parent (NCP) if the parents are still married;

(b) Agree to send to DCS any support payments received directly from the NCP within eight days of receipt;

(c) Agree to direct a payor or forwarding agent to make payments to the Washington state support registry (WSSR);

(d) Agree not to hire an attorney or collection agency, or apply to any other state's IV-D agency to collect the same support obligation or support debt, without notifying DCS;

(e) Complete, sign, date and submit to DCS the application form and any other required documents;

(f) Supply copies of divorce and dissolution decrees, support orders and modification orders, and any related documents affecting a support obligation;

(g) Provide a statement of the amount of support debt owed by the NCP; ~~(and)~~

(h) Include or attach a list, by date, of the support payments received from the NCP during the time period for which the CP seeks support; and

(i) Pay any applicable fee imposed by state or federal law.

(5) If someone other than the CP has legal custody of the child under a court order, the CP must affirm that:

(a) The CP has not wrongfully deprived the legal custodian of custody; and

(b) The person with legal custody has not been excused from making support payments by a court or administrative tribunal.

NEW SECTION

WAC 388-14A-2200 When does DCS charge a twenty-five dollar annual fee on a child support case? (1) Under RCW 74.20.040, the division of child support (DCS) must impose an annual fee of twenty-five dollars for each case in which:

(a) The custodial parent (CP) has never received TANF, Tribal TANF or AFDC as the custodian of minor children; and

(b) DCS has collected and disbursed to the CP at least five hundred dollars on the case during that federal fiscal

year. The federal fiscal year runs from October 1 through September 30.

(2) A custodial parent who has children with more than one noncustodial parent (NCP) may be assessed a separate twenty-five dollar fee for each case in which DCS collects at least five hundred dollars in a federal fiscal year.

(3) If DCS has already collected the twenty-five dollar annual fee on a case and the CP begins receiving TANF or Tribal TANF during the same federal fiscal year, DCS is not required to refund or cancel the fee.

(4) A CP has the burden of proving prior receipt of TANF, Tribal TANF or AFDC in any jurisdiction, which would exempt the CP from paying the annual fee.

(a) DCS may impose the fee until the CP provides proof of prior receipt of TANF, Tribal TANF or AFDC.

(b) DCS does not refund any fee imposed before CP provides the proof.

(5) The fee is retained from support payments collected, which means that the NCP gets credit for the payment.

(6) If the CP wants DCS to waive collection of the twenty-five dollar fee, the CP may request a conference board under WAC 388-14A-6400.

(a) If the CP provides proof that he or she received TANF, Tribal TANF or AFDC from another state or tribe, the CP is exempt from assessment of the fee.

(b) The CP may provide proof that hardship in the CP's household justifies waiver of the fee.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue. (1) A notice and finding of financial responsibility (NFFR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.055.

(2) The NFFR:

(a) Advises the noncustodial parent and the custodial parent (who can be either a parent or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFFR fully and fairly advises the parents of their rights and responsibilities under the NFFR.

(b) Includes the information required by RCW 26.23.050 and 74.20A.055.

(c) Includes ~~((the noncustodial parent's health insurance obligation))~~ a statement that either or both parents (mother and father) are obligated to provide medical support, as required by RCW 26.18.170 and 26.23.050.

(d) Includes a statement that both parents (mother and father) each owe a proportionate share of medical expenses, pursuant to RCW 26.18.170 and 26.23.050.

(e) May include an obligation to provide support for day care or special child-rearing expenses, pursuant to chapter 26.19 RCW.

~~((e))~~ (f) Warns the noncustodial parent (NCP) and the custodial parent (CP) that at an administrative hearing, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the

amount stated in the NFFR, if necessary for an accurate support order.

(3) After service of the NFFR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

(4) The NCP must make all support payments to the Washington state support registry after service of the NFFR. DCS does not give the NCP credit for payments made to any other party after service of a NFFR, except as provided by WAC 388-14A-3375.

(5) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFFR is a final order. WAC 388-14A-3110 describes when the notice becomes a final order.

(6) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFFR can end sooner or later than age eighteen.

(7) If paternity has been established by an affidavit or acknowledgment of paternity, DCS attaches a copy of the acknowledgment, affidavit, or certificate of birth record information to the notice. A party wishing to challenge the acknowledgment or denial of paternity may only bring an action in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335.

(8) If the parents filed a paternity affidavit or acknowledgment of paternity in another state, and by that state's law paternity is therefore conclusively established, DCS may serve a NFFR to establish a support obligation.

(9) A hearing on a NFFR is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity. (1) A notice and finding of parental responsibility (NFPR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.056.

(2) The NFPR differs from a notice and finding of financial responsibility (NFFR) (see WAC 388-14A-3115) because the parties may request genetic testing to contest paternity after being served with a NFPR.

(3) DCS serves a NFPR when:

(a) An affidavit acknowledging paternity is on file with the center for health statistics and was filed before July 1, 1997; or

(b) An affidavit acknowledging paternity is on file with the vital records agency of another state and the laws of that state allow the parents to withdraw the affidavit or challenge paternity.

(4) DCS attaches a copy of the acknowledgment of paternity or certification of birth record information to the NFPR.

(5) The NFPR advises the noncustodial parent (NCP) and the custodial parent (who is either the mother or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFPR fully and fairly advises the parents of their rights and responsibilities under the NFPR. The NFPR warns the NCP and the custodial parent (CP) that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFFR, if necessary for an accurate support order.

(6) The NFPR includes the information required by RCW 26.23.050, 74.20A.055, and 74.20A.056.

(7) The NFPR includes ~~((the NCP's health insurance obligation))~~ a statement that either or both parents (mother and father) are obligated to provide medical support, pursuant to RCW 26.18.170 and 26.23.050.

(8) The NFPR includes a statement that both parents (mother and father) each owe a proportionate share of medical expenses, pursuant to RCW 26.18.170 26.23.050.

(9) The NFPR may include an obligation to provide support for day care expenses or special child-rearing expenses, pursuant to chapter 26.19 RCW.

~~((9))~~ (10) DCS may not assess an accrued support debt for a period longer than five years before the NFPR is served. This limitation does not apply to the extent that the NCP hid or left the state of Washington for the purpose of avoiding service.

~~((10))~~ (11) After service of the NFPR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

~~((11))~~ 12 The NCP must make all support payments to the Washington state support registry after service of the NFPR. DCS does not give the NCP credit for payments made to any other party after service of the NFPR, except as provided by 388-14A-3375.

~~((12))~~ (13) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFPR is a final order. See WAC 388-14A-3110 for when the notice becomes a final order.

~~((13))~~ (14) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFPR can end sooner or later than age eighteen.

~~((14))~~ (15) Either the NCP, or the mother, if she is also the CP, may request genetic tests. A mother who is not the CP may at any time request that DCS refer the case for paternity establishment in the superior court.

~~((15))~~ (16) DCS does not stop enforcement of the order unless DCS receives a timely request for hearing or a timely request for genetic tests. See WAC 388-14A-3110 for time limits. DCS does not refund any money collected under the notice if the NCP is later:

(a) Excluded from being the father by genetic tests; or

(b) Found not to be the father by a court of competent jurisdiction.

~~((16))~~ (17) If the NCP requested genetic tests and was not excluded as the father, he may request within twenty days from the date of service of the genetic tests in Washington, or sixty days from the date of service of the genetic tests outside of Washington:

(a) A hearing on the NFPR.

(b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

~~((17))~~ (18) If the NCP was not excluded as the father, the CP (or the mother, if she is also the CP), may within twenty days of the date of service of the genetic tests request:

(a) A hearing on the NFPR; or

(b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

~~((18))~~ (19) If the NCP is excluded by genetic testing, DCS may refer the case for paternity establishment in the superior court.

~~((19))~~ (20) A hearing on a NFPR is for the limited purpose of resolving the NCP's current support obligation, accrued support debt and amount of reimbursement to DCS for paternity-related costs. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

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

AMENDATORY SECTION (Amending WSR 07-06-053, filed 3/2/07, effective 4/2/07)

WAC 388-14A-3200 How does DCS determine my support obligation? (1) The division of child support (DCS) determines support obligations using the Washington state child support schedule (the WSCSS), which is found in chapter 26.19 RCW, for the establishment and modification of support orders.

(2) See WAC 388-14A-8100 for rules on completing the worksheets under the WSCSS for cases where DCS is determining support for a child in foster care.

(3) DCS does not have statutory authority to set the child support obligations of both the noncustodial parent (NCP) and custodial parent (CP) in the same administrative proceeding, except that RCW 26.18.170 and 26.23.050 both provide that an administrative order that sets the NCP's child support obligation can also determine the CP's medical support obligation.

(a) DCS orders can not set off the support obligation of one parent against the other.

(b) Therefore, the method set forth in Marriage of Arvey, 77 Wn. App 817, 894 P.2d 1346 (1995), must not be applied when DCS determines a support obligation.

(4) The limitations in this section apply to DCS staff and to administrative law judges (ALJs) who are setting child support obligations.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 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. (1) The

division of child support (DCS) may serve a notice of support owed on a noncustodial parent (NCP) under RCW 26.23.110 to establish a fixed dollar amount of monthly support and accrued support debt:

(a) If ~~((a))~~ the support obligation under ~~((a-court))~~ an order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of ~~((the))~~ a court order.

(2) The notice of support owed may include day care costs and medical support if the court order provides for such costs. WAC 388-14A-3312 describes the use of a notice of support owed to collect unreimbursed medical expenses from either the noncustodial parent or the custodial parent.

(3) DCS serves a notice of support owed on an NCP like a summons in a civil action or by certified mail, return receipt requested.

(4) Following service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(5) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support;

(b) Any other information not contained in the order that was used to calculate monthly support and the support debt; and

(c) Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.

(6) The NCP must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(7) A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

(8) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(9) For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.

(10) A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(11) If an NCP or custodial parent (CP) requests a late hearing, the party must show good cause for filing the late

hearing request if it is filed more than one year after service of the notice of support owed.

(12) A notice of support owed fully and fairly informs the NCP of the rights and responsibilities in this section.

(13) For the purposes of this section, WAC 388-14A-3312, 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian," ((ø)) "custodial parent," or "party seeking reimbursement."

NEW SECTION

WAC 388-14A-3312 The division of child support serves a notice of support owed for unreimbursed medical expenses to establish a fixed dollar amount owed under a child support order. (1) The division of child support (DCS) may serve a notice of support owed for unreimbursed medical expenses under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) in order to collect the obligated parent's share of unreimbursed medical expenses owed to the party seeking reimbursement.

(2) Either the NCP or CP may ask DCS to serve a notice of support owed for unreimbursed medical expenses on the other party to the support order, if that party is an obligated party under the support order. DCS serves the notice if the party seeking reimbursement provides proof of payment of at least five hundred dollars in uninsured medical expenses.

(3) A notice of support owed for unreimbursed medical expenses:

(a) May be for any period of up to twenty-four consecutive months.

(b) May include only those medical expenses incurred after July 21, 2007.

(c) May not include months which were included in a prior notice of support owed for unreimbursed medical expenses or a prior judgment.

(d) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for unreimbursed medical expenses.

(4) The party seeking reimbursement must ask DCS to serve a notice of support owed for unreimbursed medical expenses within two years of the expense being incurred.

(a) The fact that a claim for unreimbursed medical expenses is rejected by DCS does not mean that the parent cannot pursue reimbursement of those expenses by proceeding in court.

(b) If a parent obtains a judgment for unreimbursed medical expenses, DCS enforces the judgment.

(5) The NCP must apply for full child support enforcement services before the NCP may ask DCS to enforce the CP's medical support obligation.

(a) DCS opens a separate case to enforce a CP's medical support obligation.

(b) The case where DCS is enforcing the support order and collecting from the NCP is called the main case.

(c) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case.

(6) DCS serves a notice of support owed on the obligated parent like a summons in a civil action or by certified mail, return receipt requested.

(7) Following service on the obligated parent, DCS mails a notice to the party seeking reimbursement under WAC 388-14A-3315.

(8) In a notice of support owed for unreimbursed medical expenses, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Notice of the right to request an annual review of the order, as provided in WAC 388-14A-3318.

(9) A notice of support owed for unreimbursed medical expenses becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the obligated parent, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(b) Files a request with DCS for a hearing under this section; or

(c) Obtains a stay from the superior court.

(10) A notice of support owed for unreimbursed medical expenses served in another state becomes final according to WAC 388-14A-7200.

(11) For the rules on a hearing on a notice of support owed for unreimbursed medical expenses, see WAC 388-14A-3320.

(12) A notice of support owed for unreimbursed medical expenses or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(13) If the obligated parent is the NCP, any amounts owing determined by the final administrative order are added to the debt on the main case.

(14) If the obligated parent is the CP, any amounts owing determined by the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final, but not to exceed fifty percent of the current support amount; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order, but not to exceed fifty percent of the current support amount.

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

(15) If either the obligated parent or the parent seeking reimbursement requests a late hearing, that party must show good cause for filing the late hearing request if it is filed more

than one year after service of the notice of support owed for unreimbursed medical expenses.

(16) A notice of support owed for unreimbursed medical expenses fully and fairly informs the obligated parent of the rights and responsibilities in this section.

(17) A notice of support owed for unreimbursed medical expenses under this section is subject to annual review as provided in WAC 388-14A-3318.

(18) If both CP and NCP request that DCS serve a notice of support owed for unreimbursed medical expenses on the other party for unreimbursed health care costs, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

(19) DCS does not serve a second or subsequent notice of support owed for unreimbursed medical expenses on an obligated parent until the party seeking reimbursement meets the conditions set forth in WAC 388-14A-3318.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-3315 When DCS serves a notice of support debt or notice of support owed or notice of support owed for unreimbursed medical expenses, we notify the ((custodial parent and/or the payee under the)) other party to the child support order. (1) The division of child support (DCS) sends a notice to ((a)) the payee under a ((court)) Washington child support order or a foreign ((administrative)) child support order ((for support)) when DCS receives proof of service on the noncustodial parent (NCP) of:

(a) A notice of support owed under WAC 388-14A-3310; or

(b) A notice of support owed for unreimbursed health care costs under WAC 388-14A-3312; or

(c) A notice of support debt under WAC 388-14A-3304.

(2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the NCP.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC 388-14A-3310, a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, or a notice of support debt under WAC 388-14A-3304 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(5) The effective date of a hearing request is the date DCS receives the request.

(6) When DCS serves a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, DCS mails the notice to payee to the parent seeking reimbursement.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110? (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(a) This type of annual review concerns the annual review that takes place after service of a notice of support owed under WAC 388-14A-3310.

(b) For the definition of an annual review of a support order under RCW 26.23.110 that takes place after service of a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, see WAC 388-14A-3318.

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) Either CP or NCP may request an annual review of the support order, even though the statute mentions only the NCP.

(5) DCS may request an annual review of the support order but has no duty to do so.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(7) The twelve-month requirement for an annual review under this section runs separately from the twelve-month requirement for an annual review under WAC 388-14A-3318.

NEW SECTION

WAC 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312? (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the noncustodial parent (NCP) or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312:

(a) Either CP or NCP may be the party seeking reimbursement.

(b) The party seeking reimbursement must provide proof of payment of at least five hundred dollars in unreimbursed medical expenses from the last twenty-four months.

(c) At least twelve months must have passed since:

(i) The date the last notice of support owed for unreimbursed medical expenses on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for unreimbursed medical expenses on behalf of that party, became a final administrative order.

(3) In the event that DCS has served both a notice of support owed under WAC 388-14A-3310 and a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312 on the same case, each type of notice of support owed has its own twelve-month cycle for annual review.

(4) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3320 What happens at a hearing on a notice of support owed? (1) A hearing on a notice of support owed is only for interpreting the ~~((court))~~ order for support and any modifying orders and not for changing or deferring the support provisions of the order.

(2) ~~((The))~~ A hearing on a notice of support owed served under WAC 388-14A-3310 is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the ~~((court))~~ order to begin or adjust the support obligation was met.

(3) A hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312 is only to determine:

(a) Whether the parent on whom the notice was served is obligated under the support order to pay for uninsured medical expenses for the children covered by the order;

(b) The total amount of uninsured medical expenses paid or incurred by the party seeking reimbursement;

(c) The obligated parent's share of the uninsured medical expenses;

(d) The amount, if any, the obligated parent has already paid to the party seeking reimbursement; and

(e) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(4) If the administrative law judge (ALJ) determines that the unreimbursed medical expenses claimed by the parent seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determination listed in subsection (3) above.

(5) The hearing is not for the purpose of setting a payment schedule on the support debt.

~~((4))~~ (6) Either the noncustodial parent (NCP) or payee may request a hearing on a notice of support owed served under WAC 388-14A-3310.

(7) Either the obligated parent or the party seeking reimbursement may request a hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312.

(8) The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

~~((5))~~ (9) The office of administrative hearings (OAH) sends a notice of hearing to the NCP, to the division of child support (DCS), and to the ~~((payee))~~ custodial parent (CP). The NCP and the ~~((payee))~~ CP each may participate in the hearing as an independent party.

~~((6))~~ (10) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the ~~((payee))~~ CP appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

~~((7))~~ (11) If ~~((the payee))~~ either party requests a late hearing on a notice of support owed, ~~((the payee))~~ that party must show good cause for filing the late hearing request, as provided in WAC 388-14A-3500.

(12) For purposes of this section, the terms "payee" and "CP" are used interchangeably and can mean either the CP, the payee under the order or both.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may request a hearing to prospectively modify ~~((the NCP's obligation under a support establishment notice))~~ an administrative order for child support. The request must be in writing and must state:

(a) Any circumstances that have changed; ~~((and))~~

(b) Any relief requested; and

(c) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last known to DCS.

(4) DCS, the administrative law judge (ALJ), or the department review judge:

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.

(5) A request to add a requirement for the custodial parent (CP) to provide health insurance coverage, or to add a provision in the order to include the CP's share of medical expenses, is not by itself a sufficient basis for modification of the order.

(6) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

~~((6))~~ (7) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

~~((7))~~ (8) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

(b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

~~((8))~~ (9) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do? (1) Once a support order is entered requiring health insurance, the ~~((noncustodial))~~ obligated parent ~~((NCP))~~ must take the following actions within twenty days:

(a) Provide health insurance coverage; and

(b) Provide proof of coverage to the division of child support (DCS), such as:

(i) The name of the insurer providing the health insurance coverage;

(ii) The names of the beneficiaries covered;

(iii) The policy number;

(iv) That coverage is current; and

(v) The name and address of the ~~((NCP's))~~ obligated parent's employer.

(2) If health insurance coverage that is accessible to the children named in the order is available, the ~~((NCP))~~ obligated parent must:

(a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(3) If health insurance is not immediately available to the ~~((NCP))~~ obligated parent, as soon as health insurance becomes available, the ~~((NCP))~~ obligated parent must:

(a) Provide for coverage for the children named in the order; and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for health insurance.

(5) A child's enrollment in Indian health services satisfies the requirements of this section.

(6) See WAC 388-14A-4165 for a description of what happens when the combined total of ~~((NCP's))~~ a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

NEW SECTION

WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide health insurance coverage? (1) A noncustodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the health insurance obligation of the custodial parent (CP).

(2) DCS does not enforce a custodial parent's obligation to provide health insurance coverage when:

(a) The support order does not include a health insurance obligation for the CP.

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(c) The amount that CP would have to pay for the premium for health insurance exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health insurance provided by someone else, such as the CP's current spouse.

(e) The children are receiving medicaid.

(f) The CP and the children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The children are covered by Indian Health Services (IHS) through the CP.

(j) The CP is receiving child support enforcement services through a tribal IV-D program.

(3) If none of the conditions under subsection (2) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

(4) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce ~~((a noncustodial))~~ an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the ~~((noncustodial))~~ obligated parent's employer in one of the following ways:

- (a) In the same manner as a summons in a civil action,
- (b) By certified mail, return receipt requested,
- (c) By regular mail, or
- (d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

- (a) A court or administrative order requires the ~~((NCP))~~ obligated parent to provide insurance coverage for a dependent child;
- (b) The ~~((NCP))~~ obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;
- (c) The requirements of RCW 26.23.050 are met; and
- (d) DCS has reason to believe that coverage is available through the ~~((NCP's))~~ obligated parent's employer or union.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4122 What kind of information is included in the National Medical Support Notice? The National Medical Support Notice (NMSN) and its cover letter advise the ~~((noncustodial))~~ obligated parent's employer and the plan administrator that:

(1) The ~~((noncustodial))~~ obligated parent ~~((NCP))~~ is required to provide health insurance coverage for the children named in the notice;

(2) Information regarding the custodial parent and children, especially address information, is confidential and may not be released to anyone, including the noncustodial parent (NCP);

(3) Within twenty business days of the date on the notice, the employer must either:

- (a) Respond to the NMSN by completing the response form and returning it to DCS; or
- (b) Forward Part B of the NMSN to the plan administrator.

(4) The employer or plan administrator is required to enroll the children in a health insurance plan offered by the employer or the union if insurance the children can use is or will become available as provided in WAC 388-14A-4130;

(5) The employer or plan administrator must provide:

- (a) Information about the health insurance plan and policy as requested in the notice; and
- (b) Any necessary claim forms or membership cards as soon as they are available.

(6) The employer or union must withhold premiums from the ~~((NCP's))~~ obligated parent's net earnings if the ~~((NCP))~~ obligated parent is required to pay part or all of the premiums for coverage under the health insurance plan.

(7) Noncompliance with the NMSN subjects the employer or union to a fine of up to one thousand dollars under RCW 74.20A.350. See WAC 388-14A-4123 for a description of noncompliance penalties.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4124 Who are the parties involved with the National Medical Support Notice? (1) The National Medical Support Notice (NMSN) is a federally mandated form used by child support enforcement agencies to enforce ~~((a noncustodial))~~ an obligated parent's medical support obligation. The division of child support (DCS) uses the NMSN as provided in WAC 388-14A-4120.

(2) DCS sends an NMSN when there is a support order requiring the ~~((noncustodial))~~ obligated parent ~~((NCP))~~ to provide health insurance coverage for the children.

(3) DCS sends the NMSN to the ~~((NCP's))~~ obligated parent's employer.

(4) If the employer provides health insurance coverage, the employer forwards the NMSN to the appropriate plan administrator.

(5) The plan administrator is the entity which handles the ministerial functions for the group health plan maintained by the employer or a group health plan to which the employer contributes.

(6) In some cases, the employer performs the duties of the plan administrator.

(7) In some cases, the ~~((NCP's))~~ obligated parent's union either acts as or contracts with the plan administrator.

(8) The plan administrator sends coverage information to both DCS and the custodial parent (CP). In cases where the CP is the obligated parent, DCS sends coverage information to the noncustodial parent (NCP).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4125 What must an employer do after receiving a National Medical Support Notice? (1) Within twenty business days after the date on the National Medical Support Notice (NMSN), the employer must either send Part B to the plan administrator or send the employer response to the division of child support (DCS).

(2) The employer need take no action beyond responding to the NMSN if:

(a) The employer does not maintain or contribute to plans providing dependent or family health care coverage;

(b) The employee is among a class of employees (for example, part-time or nonunion) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes; or

(c) The employee either is no longer, or never has been, employed by this employer.

(3) If subsection (2) of this section does not apply, the employer must respond to the NMSN and must:

(a) Forward Part B of the NMSN to the plan administrator of each group health plan identified by the employer to enroll the ~~((noncustodial))~~ obligated parent's eligible children (see WAC 388-14A-4130 for what the plan administrator must do after receiving an NMSN); and

(b) When notified by the plan administrator that the children are enrolled:

(i) Withhold any employee contributions required for health insurance premiums and transfer those premiums to the appropriate plan; or

(ii) Notify DCS that enrollment cannot be completed because the noncustodial parent's net earnings are not high enough to allow withholding of child support and health insurance premiums; in this situation, the employer must notify DCS of the amount of the premium required to cover the children.

(c) When notified by the plan administrator that the ~~((noncustodial))~~ obligated parent ((NCP)) is subject to a waiting period, notify the plan administrator when the ~~((NCP))~~ obligated parent is eligible to enroll in the plan, and that the NMSN requires the enrollment of the children named in the NMSN.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4130 What must a plan administrator do after receiving a National Medical Support Notice from the division of child support? (1) A plan administrator who receives a National Medical Support Notice (NMSN) must respond to the NMSN within forty business days after the date on the NMSN.

(2) If the ~~((noncustodial))~~ obligated parent ((NCP)) and the children are to be enrolled in a health insurance plan, the plan administrator must:

(a) Notify the ~~((NCP))~~ obligated parent, each child, and the custodial parent (CP) (if the obligated parent is not the CP) that coverage of the children is or will become available (notifying the CP is considered the same as notifying the child if they live at the same address); and

(b) If not previously provided, send the CP a description of the coverage available, including the effective date of coverage, a summary plan description and any forms or information necessary to start coverage, and information on how to submit claims for benefits.

(3) If there is more than one option available under the plan and the ~~((NCP))~~ obligated parent is not yet enrolled, the plan administrator must:

(a) Provide to the division of child support (DCS) copies of applicable summary plan descriptions for available coverage, including the additional participant contribution necessary to obtain coverage for the children under each option and whether any option has a limited service area; and

(b) If the plan has a default option, enroll the children in the plan's default option if the plan administrator has not received DCS' election within twenty business days of the date the plan administrator returned the response to DCS; or

(c) If the plan does not have a default option, enroll the children in the option selected by DCS.

(4) If the ~~((NCP))~~ obligated parent is subject to a waiting period that expires within ninety days from the date the plan administrator receives the NMSN, the plan administrator must enroll the children named in the NMSN immediately.

(5) If the ~~((NCP))~~ obligated parent is subject to a waiting period that expires more than ninety days from the date the plan administrator receives the NMSN, the plan administrator must notify the employer, DCS, the ~~((NCP))~~ obligated

parent and the CP (if the obligated parent is not the CP) of the waiting period. When the waiting period has expired, the plan administrator must:

(a) Enroll the ~~((NCP))~~ obligated parent and the children named in the NMSN, as provided in subsection (2) or (3) above; and

(b) Notify the employer of enrollment so that the employer may determine if the NCP's income is sufficient to withhold health insurance premiums, and then either withhold accordingly or notify DCS, as provided in WAC 388-14A-4125 (3)(b).

(6) If the ~~((NCP))~~ obligated parent is subject to a waiting period whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), the plan administrator must notify the employer, DCS, the ~~((NCP))~~ obligated parent and the CP (if the CP is not the obligated parent) of the waiting period. When the waiting period has expired, the plan administrator must:

(a) Enroll the ~~((NCP))~~ obligated parent and the children named in the NMSN, as provided in subsection (2) or (3) above; and

(b) Notify the employer of enrollment so that the employer may determine if the ~~((NCP's))~~ obligated parent's income is sufficient to withhold health insurance premiums, and then either withhold accordingly or notify DCS, as provided in WAC 388-14A-4125 (3)(b).

(7) If the plan administrator determines that the NMSN does not constitute a qualified medical child support order as defined by ERISA, the plan administrator must:

(a) Notify DCS using the part of the NMSN called the plan administrator response; and

(b) Notify the ~~((NCP))~~ obligated parent, the CP (if the CP is not the obligated parent) and the children of the specific reasons for the determination. A copy of the plan administrator response is considered sufficient notice under this section.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4135 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent has health insurance but the children are not included in the coverage? (1) If the ~~((noncustodial))~~ obligated parent ((NCP)) is enrolled in a health insurance plan through the employer but has not enrolled the children named in the National Medical Support Notice (NMSN), the plan administrator must follow the steps outlined in WAC 388-14A-4130(2) and:

(a) Enroll the child(ren) named in the NMSN under the ~~((NCP's))~~ obligated parent's health insurance plan; and

(b) Notify the employer and the division of child support (DCS) that the child(ren) have been enrolled.

(2) Under RCW 48.01.235 (4)(a), the plan administrator must enroll a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions.

(3) WAC 388-14A-4145 discusses what the plan administrator must do if the obligated parent's ~~((NCP's))~~ health insurance plan is not accessible to the children.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4140 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent is eligible for health insurance but is not yet enrolled? (1) If the ~~((noncustodial))~~ obligated parent ~~((NCP))~~ is eligible for health insurance through the employer but has not enrolled on his or her own, the plan administrator must proceed under WAC 388-14A-4130(3) and:

(a) Enroll the ~~((NCP))~~ obligated parent and the children in the least expensive plan which provides accessible coverage for the children named in the National Medical Support Notice (NMSN); and

(b) Notify the employer and the division of child support (DCS) that the ~~((NCP))~~ obligated parent and the children have been enrolled.

(2) The plan administrator notifies DCS of all health insurance plans for which the ~~((NCP))~~ obligated parent is eligible, and notifies DCS which plan is the default option.

(3) If DCS does not specify otherwise within twenty business days of the date the plan administrator responds to DCS, the plan administrator must enroll the ~~((NCP))~~ obligated and the children in the default plan.

(4) Under RCW 48.01.235 (4)(a), the plan administrator must enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions. In order to obtain coverage for the children, the plan administrator must enroll an otherwise eligible ~~((NCP))~~ obligated parent without regard to any enrollment season restrictions.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4143 What must the plan administrator do when the employer provides health insurance but the ~~((noncustodial))~~ obligated parent is not yet eligible for coverage? If the ~~((noncustodial))~~ obligated parent is subject to a waiting period before being eligible for coverage under a health insurance plan provided by the employer, the plan administrator must proceed as follows:

(1) If the ~~((NCP))~~ obligated parent is subject to a waiting period that expires ninety days or less from the date of receipt of the National Medical Support Notice (NMSN), see WAC 388-14A-4130(4);

(2) If the ~~((NCP))~~ obligated parent is subject to a waiting period that expires more than ninety days from the date of receipt of the NMSN, see WAC 388-14A-4130(5); and

(3) If the ~~((NCP))~~ obligated parent is subject to a waiting period whose duration is determined by a measure other than the passage of time, see WAC 388-14A-4130(6).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4145 What must the plan administrator do when the insurance plan in which the ~~((noncustodial))~~ obligated parent is enrolled does not provide coverage which is accessible to the children? (1) If more than one insurance plan is offered by the employer or union, and each

plan may be extended to cover the child, then the plan administrator must enroll the children named in the national medical support notice (NMSN) in the plan in which the ~~((noncustodial))~~ obligated parent ~~((NCP))~~ is enrolled.

(2) If the ~~((NCP's))~~ obligated parent's plan does not provide coverage which is accessible to the child, the plan administrator:

(a) May give the ~~((NCP))~~ obligated parent the opportunity to change plans so that ~~((NCP))~~ obligated parent and the children may be enrolled in a plan which provides accessible coverage for the children; but

(b) Is not required to change the ~~((NCP's))~~ obligated parent's plan to one which provides accessible coverage for the children.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4150 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent has more than one family? (1) When ~~((a noncustodial parent (NCP)))~~ an obligated parent has a health insurance obligation for more than one family, the division of child support (DCS) sends one national medical support notice (NMSN) for each family to the ~~((NCP's))~~ obligated parent's employer.

(2) If the ~~((NCP))~~ obligated parent is already enrolled in a health insurance plan, the plan administrator must attempt to enroll all children named in all of the NMSNs in the ~~((NCP's))~~ obligated parent's plan.

(3) If the ~~((NCP))~~ obligated parent is not already enrolled in a health insurance plan, and the employer offers a health insurance plan which would cover all children named in all of the NMSNs, the plan administrator must enroll the children in that plan. See WAC 388-14A-4140.

(4) If the employer offers only one health insurance plan, or multiple plans which would cover some, but not all of the children named in the NMSNs, the plan administrator must so notify DCS.

(5) DCS chooses the appropriate health insurance plan by considering the following factors:

(a) The wishes of the custodial parent of each family;

(b) The premium limits set by the support orders;

(c) The relative ages of all the children;

(d) How many of ~~((NCP's))~~ the obligated parent's children live in Washington and how many live elsewhere;

(e) How many of ~~((NCP's))~~ the obligated parent's children receive Medicaid;

(f) How many of ~~((NCP's))~~ the obligated parent's children are already covered by private health insurance;

(g) Which plan covers the most children; and

(h) Other factors as may be developed in DCS policy.

(6) The factors listed in subsection (5) are not exclusive, nor are they equally weighted.

(7) Nothing in this section requires the plan administrator to take action to change the ~~((NCP's))~~ obligated parent's plan unless the ~~((NCP))~~ obligated parent requests a change.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4160 Are there any limits on the amount ~~((a noncustodial))~~ an obligated parent may be required to pay for health insurance premiums? (1) The National Medical Support Notice (NMSN) advises the employer of any limitations on the amount ~~((a noncustodial parent (NCP)))~~ an obligated parent may be required to pay for health insurance premiums to cover the children.

(2) Often the support order which contains the health insurance obligation determines the limitation on premium amounts, or states that there is no limitation. See WAC 388-14A-4100 for a discussion of premium limitation amounts.

(3) The premium limitation amount stated in the NMSN:

(a) Describes the premium amount required to cover the children named in the notice; and

(b) Does not include any amounts required to cover the ~~((NCP))~~ obligated parent.

(4) Even if the medical insurance premium is within the limits set by the order or by WAC 388-14A-4100, the fifty percent limitation on withholding found in RCW 26.23.060 (3) still applies. See WAC 388-14A-4165 for a description of what happens when the fifty percent limitation is exceeded.

(5) When calculating the fifty percent limitation for withholding purposes:

(a) The premium attributable to coverage for the children is always included in this calculation; but

(b) The premium attributable to coverage for the ~~((NCP))~~ obligated parent is included only when DCS requires the employer or plan administrator to enroll the ~~((NCP))~~ obligated parent in a health insurance plan in order to obtain coverage for the ~~((NCP's))~~ obligated parent's children. See also WAC 388-14A-4165(3).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4175 Is an employer ~~((obligated))~~ required to notify the division of child support when insurance coverage for the children ends? (1) Once the division of child support (DCS) has notified an employer that ~~((the noncustodial))~~ a parent ((NCP)) is obligated by a support order to provide health insurance coverage for the children named in the order, the national medical support notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

AMENDATORY SECTION (Amending WSR 05-08-060, filed 3/31/05, effective 5/1/05)

WAC 388-14A-4180 When must the division of child support communicate with the DSHS ~~((medical assistance))~~ health and recovery services administration? (1) The division of child support (DCS) must inform the DSHS ~~((medical assistance))~~ health and recovery services administration ~~((MAA))~~ (HRSA) of the existence of a new or modified court or administrative order for child support when the

order includes a requirement for medical support. ~~((MAA))~~ HRSA is the part of DSHS which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide ~~((MAA))~~ HRSA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, Medicaid number or the individual's Social Security number;

(b) Name of the ~~((noncustodial parent (NCP)))~~ obligated parent;

(c) Social Security number of the ~~((NCP))~~ obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the ~~((NCP))~~ obligated parent;

(f) Name and address of the ~~((NCP's))~~ obligated parent's employer;

(g) Information regarding the ~~((NCP's))~~ obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with ~~((MAA))~~ HRSA to determine if there have been any lapses (stops and starts) in the ~~((NCP's))~~ obligated parent's health insurance coverage for Medicaid applicants.

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

WAC 388-14A-5000 How does the division of child support distribute support payments? (1) Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services; ~~((or))~~

(e) Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information.

(2) DCS distributes support based on the date of collection. DCS considers the date of collection to be the date that DCS receives the payment, no matter when the payment was withheld from the noncustodial parent (NCP).

(3) If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter 63.29 RCW, the Uniform Unclaimed Property Act.

(4) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.

(5) DCS changes the distribution rules based on changes in federal statutes and regulations.

(6) When required by state and federal law, DCS distributes to the federal government the twenty-five dollar annual fee for support enforcement services after five hundred dollars is disbursed to a family during a federal fiscal year.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5002 How does DCS distribute support money in a nonassistance case? (1) A nonassistance case is one where the family has never received a cash public assistance grant.

(2) The division of child support (DCS) applies support money within each Title IV-D nonassistance case:

(a) First, to satisfy the current support obligation for the month DCS received the money;

(b) Second, to the noncustodial parent's support debts owed to the family;

(c) Third, to prepaid support as provided for under WAC 388-14A-5008.

(3) After DCS disburses at least five hundred dollars to the family in a federal fiscal year, DCS may retain a twenty-five dollar annual fee for that case from a custodial parent who has never received AFDC, TANF or Tribal TANF.

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

WAC 388-14A-5005 How does DCS distribute intercepted federal income tax refunds? (1) The division of child support (DCS) applies intercepted federal income tax refunds in accordance with 42 U.S.C. Sec. 657, as follows:

(a) First, to support debts which are permanently assigned to the department to reimburse public assistance payments; and

(b) Second, to support debts which are temporarily assigned to the department to reimburse public assistance payments; and

(c) Third, to support debts that are not assigned to the department; and

(d) To support debts only, not to current and future support obligations. DCS must refund any excess to the noncustodial parent (NCP).

((3)) (2) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and RCW 74.20.040 from federal income tax refunds applied to nonassistance support debts.

(3) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a payment on behalf of an NCP is from an intercepted refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5100 What kind of distribution notice does the division of child support send? (1) The division of child support (DCS) mails a distribution notice once each month, or more often, to the last known address of a person for whom it received support during the month, except as provided under subsection (6) of this section.

(2) DCS includes the following information in the notice:

(a) The amount of support money DCS received and the date of collection;

(b) A description of how DCS allocated the support money between current support and the support debt and any fees required by state or federal law; and

(c) The amount DCS claims as reimbursement for public assistance paid, if applicable.

(3) The person to whom a distribution notice is sent may file a request for a hearing under subsection (4) of this section within ninety days of the date of the notice to contest how DCS distributed the support money, and must make specific objections to the distribution notice. The effective date of a hearing request is the date DCS receives the request.

(4) A hearing under this section is for the limited purpose of determining if DCS correctly distributed the support money described in the contested notice.

(a) There is no hearing right regarding fees that have been charged on a case.

(b) If a custodial parent (CP) wants to request waiver of the fee, the CP may request a conference board under WAC 388-14A-6400.

(5) A person who requests a late hearing must show good cause for being late.

(6) This section does not require DCS to send a notice to a recipient of payment services only.

AMENDATORY SECTION (Amending WSR 07-06-053, filed 3/2/07, effective 4/2/07)

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.18-170, and in RCW 26.23.050 (3) and (5). The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) If requested by a party, the NCP's share of any special child-rearing expenses in a sum certain amount per month;

(f) ~~((The NCP's obligation))~~ A statement that either or both parents are obligated to provide medical support under RCW 26.18.170;

(g) Both parents' proportional share of medical expenses;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

~~((h))~~ (i) The NCP's current and future monthly support obligation as a per month per child amount and order payments in that amount; and

~~((i))~~ (j) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(3) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(4) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(5) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

(6) In a hearing held on a notice issued under WAC 388-14A-3312, the ALJ must determine the amount owed by the obligated parent to the other for unreimbursed medical expenses.

(a) The ALJ does not specify how the amount owed by the obligated parent should be paid.

(b) In the event that DCS has served a notice under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-6400 The division of child support's grievance and dispute resolution method is called a conference board. (1) The division of child support (DCS) provides conference boards for the resolution of complaints and problems regarding DCS cases, and for granting exceptional or extraordinary relief. A conference board is an informal review of case actions and of the circumstances of the parties and children related to a child support case.

(a) The term conference board can mean either of the following, depending on the context:

(i) The process itself, including the review and any meeting convened; or

(ii) The DCS staff who make up the panel which convenes the hearing and makes factual and legal determinations.

(b) A conference board chair is an attorney employed by DCS in the conference board unit. In accordance with section WAC 388-14A-6415, the conference board chair reviews a case, and:

(i) Issues a decision without a hearing, or

(ii) Sets a hearing to take statements from interested parties before reaching a decision.

(2) A person who disagrees with any DCS action related to establishing, enforcing or modifying a support order may ask for a conference board.

(3) DCS uses the conference board process to:

(a) Help resolve complaints and problems over agency actions;

(b) Determine when hardship in the paying parent's household, as defined in RCW 74.20A.160, justifies the release of collection action or the refund of a support payment;

(c) Determine when hardship in the custodial parent's household justifies the waiver of any required fee;

(d) Set a repayment rate on a support debt; and

~~((d))~~ (e) Determine when it is appropriate to write off support debts owed to the department based on:

(i) Hardship to the paying parent or that parent's household;

(ii) Settlement by compromise of disputed claims;

(iii) Probable costs of collection in excess of the support debt; or

(iv) An error or legal defect that reduces the possibility of collection.

(4) A conference board is not a formal hearing under the administrative procedure act, chapter 34.05 RCW.

(5) A conference board does not replace any formal hearing right created by chapters 388-14A WAC, or by chapters 26.23, 74.20 or 74.20A RCW.

(6) This section and WAC 388-14A-6405 through 388-14A-6415 govern the conference board process in DCS cases.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-6415 Scope of authority of conference board chair defined. The conference board chair has the authority to:

(1) Subpoena witnesses and documents, administer oaths and take testimony;

(2) Grant relief by setting payment plans, writing off debt owed to the department, waiving fees, or refunding collected money;

(3) Adjust support debts based on evidence gathered during the conference board process;

(4) Direct distribution of collected support; and

(5) Take any action consistent with Washington law and DCS policy to resolve disputes, grant relief or address issues of equity.

WSR 07-18-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-187—Filed August 22, 2007, 2:23 p.m., effective August 22, 2007, 2:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-11600D, 220-56-12200B, and 232-28-61900Q; and amending WAC 220-56-116, 220-56-122, and 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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: August 22, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-11600D Statewide saltwater hook rules—2007 North of Falcon. Notwithstanding the provisions of WAC 220-56-116, effective immediately, until further notice:

(1) It is unlawful to use more than two hooks to fish in saltwater, except for forage fish jigger gear and squid jigger gear, and when fishing from the north jetty of the Columbia River.

(2) It is unlawful to use barbed hooks in Marine Areas 5-13, except for forage fish jigger gear.

(3) It is unlawful to use other than one single-point barbless hook to fish for sturgeon.

(4) It is unlawful to use other than single-point barbless hooks to fish for salmon in Marine Areas 1-4, except in the Ocean Shores and Westport Boat Basins, and in Marine Area 2-1, immediately until further notice, as provided for in this section.

(5) It is unlawful to fish for or possess salmon taken with terminal gear hooks in violation of non-buoyant lure restrictions in the following saltwater areas during the periods indicated:

(a) Budd Inlet waters south of a line projected true west from the KGY radio station to the mainland and north of the closed zone provided for in WAC 220-56-128 - immediately until further notice.

(b) Ocean Shores Boat Basin - Immediately until further notice.

(c) Westport Boat Basin - Immediately until further notice.

(6) Use of gear in violation of this section is an infraction, punishable under RCW 77.15.160.

(7) It is unlawful to possess fish or shellfish taken with gear in violation of the provisions of this section. Possession of fish or shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the fish or shellfish were taken with such gear. Possession of such fish or shellfish is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the fish or shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

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

NEW SECTION

WAC 220-56-12200B Statewide bait rules—2007 North of Falcon. Notwithstanding the provisions of WAC 220-56-122, effective immediately, until further notice, it is lawful to use bait in saltwater.

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—2007 North of Falcon. Notwithstanding the provisions of WAC 232-28-619, effective immediately, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Big Beef Creek (Kitsap County): Waters within 100 feet of the Seabeck Highway NW Bridge closed to all fishing immediately until further notice.

McAllister Creek (Thurston County): Salmon: Open immediately until further notice only from mouth to Olympia - Steilacoom Road Bridge. Daily limit 6 fish, of which no more than 2 may be adult salmon.

McLane Creek (Thurston County), from a line 50 feet north of and parallel to the Mud Bay Road Bridge, to a line 100 feet upstream and parallel to the south bridge on Highway 101: Salmon: closed.

Naselle River (Pacific/Wahkiakum counties), from Highway 101 Bridge upstream, including all forks: Salmon:

Open immediately until further notice only from Highway 101 Bridge to Highway 4 Bridge. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of these 3 adult fish, no more than 1 may be a wild adult coho, and not more than 2 may be adult Chinook. Release chum.

Nemah River, Middle, and South: Salmon: Open immediately until further notice only on Middle Nemah from mouth to DNR Bridge, and on South Nemah from mouth to confluence with Middle Nemah. Daily limit 6 fish, of which no more than 2 may be adult salmon; and of the two adult fish, no more than one may be a wild adult coho. Release chum.

Purdy Creek (Mason County): Closed.

Skokomish River (Mason County), mouth to forks: Night closure, non-buoyant lure restriction, and single-point barbless hooks required immediately until further notice, mouth to Highway 101. Mouth to Highway 101: All game fish: Closed. Highway 101 to Forks: Open immediately until further notice. All game fish: release all. Selective gear rules from Highway 101 Bridge to forks. Salmon: Open immediately until further notice only from mouth to Highway 101 Bridge. Terminal gear restricted to no closer than 25 feet from a tribal gill net. Daily limit 1 salmon. Release chum salmon.

Skykomish River (Snohomish County): From mouth to mouth of Wallace River: Salmon: Open immediately until further notice, mouth to Lewis Street Bridge in Monroe. Daily limit 2 salmon plus 2 additional pink salmon. Release Chinook.

Snohomish River (Snohomish County), including all channels, sloughs, and interconnected waterways, but excluding all tributaries: Salmon: Open immediately until further notice. Daily limit 2 salmon plus 2 additional pink salmon. Release Chinook

Wallace River (Snohomish County): From its mouth to 200 feet upstream of the water intake of the salmon hatchery, immediately until further notice, closed from 363rd Avenue Southeast/Reece Road (Dike Road) to a point two hundred feet upstream of the water intake of the salmon hatchery.

Willapa River (Pacific County): Mouth to Highway 6 Bridge: Salmon: Open immediately until further notice only from mouth to Highway 6 Bridge approximately 2 miles below mouth of Trap Creek. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of the adult salmon, not more than one may be a wild adult coho, and not more than two may be adult Chinook. Release chum.

REPEALER

The following sections of the Washington Administrative Code are repealed, effective 12:01 a.m. August 26, 2007:

- WAC 220-56-11600D Statewide saltwater hook rules—2007 North of Falcon.
- WAC 220-56-12200B Statewide bait rules—2007 North of Falcon.
- WAC 232-28-61900Q Exceptions to statewide rules—2007 North of Falcon.

**WSR 07-18-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-190—Filed August 22, 2007, 2:26 p.m., effective August 22, 2007, 2:26 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-40100B; and amending WAC 220-47-401.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable numbers of pink salmon are available for a reef net fishery in Salmon Management and Catch Reporting Area 7. There is insufficient time to promulgate 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: August 22, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-40100C Reef net open periods. Notwithstanding the provisions of WAC 220-47-401, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each area:

(1)	AREA	TIME	DATES
	7	5 AM - 9 PM	8/23
		5 AM - 9 PM	8/24
		5 AM - 12 noon	8/25

(a) It is unlawful to retain Chinook salmon taken with reef net gear at all times, and it is unlawful to retain sockeye, chum or wild coho.

(2)

AREA	TIME	DATES
7, 7A	7 AM - 7 PM Daily	9/16 - 11/17

(a) It is unlawful to retain Chinook salmon taken with reef net gear at all times, and it is unlawful to retain chum or wild coho salmon taken with reef net gear prior to September 30.

(3) All other saltwater and freshwater areas - closed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-40100B Reef net open periods.

**WSR 07-18-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-193—Filed August 22, 2007, 3:07 p.m., effective August 22, 2007, 3:07 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the shrimp fishery in Catch Area 25A because of projected quota completion in this area. There is insufficient time to promulgate 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: August 22, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 are open immediately to the harvest of all shrimp species, until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-W, 26B-1, 26B-2, 26C and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, and Catch Areas 23A-C, 23B and 26D are closed to the harvest of spot shrimp.

(iii) All waters of Catch Area 25A will close to the harvest of spot shrimp, effective 12:00 p.m. August 24, 2007.

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(d) It is unlawful to set or pull shellfish pots with a mesh size of less than the size as defined below in all waters of Shrimp Management Areas 2E, 4 and 6, on days when fishing for or retaining spot shrimp. Spot shrimp taken in these areas are not subject to the minimum carapace length restriction.

(i) The minimum mesh size for rigid mesh pots is 1-inch defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels.

(ii) The minimum mesh size for flexible mesh pots is defined as 1-3/4-inch stretched mesh measure.

(e) It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1-3/16 inch as measured from the posterior mid-dorsal margin to the posterior-most part of the eye stalk orbit, in all waters of Shrimp Management Area 3.

(f) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting

Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

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

(2) Shrimp beam trawl gear:

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

(a) Catch areas 20A and that portion of Catch Areas 20B, 21A and 22A within Shrimp Management Area 1B are open immediately, until further notice.

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100N	Puget Sound shrimp pot and beam trawl fishery—Season. (07-182)
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**WSR 07-18-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-192—Filed August 22, 2007, 4:15 p.m., effective August 26, 2007, 12:01 a.m.]

Effective Date of Rule: August 26, 2007, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000K; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047.

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

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

Reasons for this Finding: The coho quota for Catch Record Card Area 1 has been caught and will close August 26, 2007. There is insufficient time to promulgate 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: August 22, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-62000L Coastal salmon seasons. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. August 26, 2007, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Area 1 - Closed

(2) Areas 2, 2-1, and 2-2:

(a) Area 2 - Open through September 16, 2007, daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

(b) Area 2-1 - Open until further notice, daily limit 6 salmon, not more than three of which may be adult salmon, of which only 2 may be Chinook. Release chum.

(c) Area 2-2 west of the Buoy 13 line - Closed until further notice.

(d) Those waters within a line from the lighthouse 1 mile south of the south jetty to Buoy No. 2, then to Buoy No. 3, then to the tip of the north jetty, then to the exposed end of the south jetty, are closed until further notice.

(3) Area 3 - Open through September 15, 2007, daily limit 2 salmon, not more than one of which may be a Chinook, except release wild coho, daily limit may include 1 additional pink.

(4) Area 4:

(a) Open through September 15, 2007, with the following area rules, limits, and species restrictions: open seven days per week, daily limit 2 salmon, not more than one of which may be a Chinook, except release chum and wild coho, daily limit may include 1 additional pink. Release Chinook east of the Bonilla-Tatoosh Line.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 26, 2007:

WAC 232-28-62000K Coastal salmon seasons. (07-185)

**WSR 07-18-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-191—Filed August 23, 2007, 5:15 p.m., effective August 23, 2007, 5:15 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule conforms to federal action taken by Pacific Fisheries Management Council. There is sufficient recreational halibut quota to provide for additional fishing in Marine Areas 3 and 4. There is insufficient time to promulgate 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: August 23, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-25500Z Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice, it is

unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(a) Catch Record Card Area 1 - Open 12:01 a.m. August 24 through 11:59 p.m. August 26, 2007. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod if the vessel has brought halibut into port or landed halibut during that trip.

(b) Catch Record Card Area 2 - Closed.

(c) Catch Record Card Areas 3 and 4 - Open only 12:01 a.m. through 11:59 p.m. September 1, 2007, shoreward of a line approximating 30 fathoms from the Bonilla-Tatoosh line south to the Queets River as described by the following coordinates:

48°24.79'N.lat.; 124°44.07'W.long.;
48°24.80'N.lat.; 124°44.74'W.long.;
48°23.94'N.lat.; 124°44.70'W.long.;
48°23.51'N.lat.; 124°45.01'W.long.;
48°22.59'N.lat.; 124°44.97'W.long.;
48°21.75'N.lat.; 124°45.26'W.long.;
48°21.23'N.lat.; 124°47.78'W.long.;
48°20.32'N.lat.; 124°49.53'W.long.;
48°16.72'N.lat.; 124°51.58'W.long.;
48°10.00'N.lat.; 124°52.58'W.long.;
48°05.63'N.lat.; 124°52.91'W.long.;
47°56.25'N.lat.; 124°52.57'W.long.;
47°40.28'N.lat.; 124°40.07'W.long.;
47°31.70'N.lat.; 124°37.03'W.long.;

(i) Effective immediately until further notice, on days when halibut fishing is closed in Catch Record Card Areas 3, and 4, unless otherwise provided, it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates:

48° 23.9' N.; 124° 44.2' W.
48° 23.6' N.; 124° 44.9' W.
48° 18.6' N.; 124° 43.6' W.
48° 18.6' N.; 124° 48.2' W.
48° 10.0' N.; 124° 48.8' W.
48° 02.4' N.; 124° 49.3' W.
47° 37.6' N.; 124° 34.3' W.
47° 31.7' N.; 124° 32.4' W.

(d) Catch Record Card Areas 6 through 11 and 13 - Closed.

(e) Catch Record Card Area 5 - Closed.

(f) Daily limit one halibut. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-56-25500Y Halibut—Seasons—Daily and possession limits. (07-189)

WSR 07-18-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-195—Filed August 24, 2007, 4:54 p.m., effective August 24, 2007, 4:54 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-52-05100P; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule reduces the weekly trip limit for spot shrimp in Catch Area 23A-S because of projected quota completion in this area. There is insufficient time to promulgate 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: August 24, 2007.

J. P. Koenings
 Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, and 6 are open immediately to the harvest of all shrimp species, until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-W, and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2E and 2W, and Catch Areas 23A-C, 23B, 25A and 26D are closed to the harvest of spot shrimp.

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective August 27, 2007, until further notice, it is unlawful for the harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week from Catch Area 23A-S.

(d) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to set or pull shellfish pots with a mesh size of less than the size as defined below in all waters of Shrimp Management Area 6, on days when fishing for or retaining spot shrimp. Spot shrimp taken in these areas are not subject to the minimum carapace length restriction.

(i) The minimum mesh size for rigid mesh pots is 1-inch defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels.

(ii) The minimum mesh size for flexible mesh pots is defined as 1-3/4-inch stretched mesh measure.

(f) It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1-3/16 inch as measured from the posterior mid-dorsal margin to the posterior-most part of the eye stalk orbit, in all waters of Shrimp Management Area 3.

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

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

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

(2) Shrimp beam trawl gear:

Shrimp Management Area 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is

open immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(a) Catch areas 20A and that portion of Catch Areas 20B, 21A and 22A within Shrimp Management Area 1B are open immediately, until further notice.

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100P Puget Sound shrimp pot and beam trawl fishery—Season. (07-193)

**WSR 07-18-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-196—Filed August 24, 2007, 4:55 p.m., effective August 24, 2007, 4:55 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized pink-targeted fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries that are not expected to exceed chinook by-catch levels modeled during the preseason process. There is insufficient time to promulgate 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: August 24, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-50100A Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 a.m. to 9 p.m. daily for vessels fishing using an operating recovery box throughout the entire open period.	August 28
9 a.m. to 9 p.m. daily for vessels NOT using an operating recovery box throughout the entire open period.	August 28

(a) It is unlawful to retain Chinook, sockeye, coho, and chum salmon.

(b) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(c) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8 a.m. to 12 a.m. (midnight).	August 28

(a) It is unlawful to retain sockeye salmon; and those salmon required to be released must be done so immediately.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 a.m. to 9 p.m.	August 25 August 26 August 28

It is unlawful to retain Chinook and sockeye salmon at all times, and it is unlawful to retain chum and wild coho salmon prior to October 1. It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(4) Waters north and west of the Area 7 "East Point Line" (a line projected from the low water range marker in Boundary Bay on the International Boundary, through the east tip of Point Roberts in the state of Washington, to the east Point light on Saturna Island in the Province of British Columbia) are closed to commercial harvest of salmon previously described in the above sections.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030) are designated as "Quick Reporting Required" per WAC 220-47-001.

**WSR 07-18-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-198—Filed August 28, 2007, 2:31 p.m., effective September 1, 2007, 12:01 a.m.]

Effective Date of Rule: September 1, 2007, 12:01 a.m.
Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-62100A.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule is necessary to revert to permanent rules that are effective September 1, 2007.

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: August 28, 2007.

Phil Anderson
for Jeff Koenings
Director

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. September 1, 2007:

WAC 232-28-62100A Puget Sound salmon seasons.
(07-167)

**WSR 07-18-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-197—Filed August 28, 2007, 2:38 p.m., effective September 1, 2007]

Effective Date of Rule: September 1, 2007.
Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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: Release of chum salmon was inadvertently left out of the permanent rule filing. This 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: August 28, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Smith Creek (Pacific Co.) Notwithstanding the provisions of WAC 232-28-619, effective September 1 through November 30, 2007, in those waters of Smith Creek from the mouth to Highway 101 Bridge, release adult Chinook and chum.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 1, 2007:

WAC 232-28-61900S Exceptions to statewide rules—Smith Creek (Pacific Co.)

**WSR 07-18-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-201—Filed August 28, 2007, 3:28 p.m., effective August 29, 2007]

Effective Date of Rule: August 29, 2007.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100A and 220-47-50100B.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized pink-targeted fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries that are not expected to exceed chinook by-catch levels modeled during the preseason process. There is insufficient time to promulgate 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 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: August 28, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-50100B Puget Sound all-citizen commercial salmon fishery. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 a.m. to 9 p.m. daily for vessels fishing using an operating recovery box throughout the entire open period.	August 29
9 a.m. to 9 p.m. daily for vessels NOT using an operating recovery box throughout the entire open period.	August 29

(a) It is unlawful to retain Chinook, sockeye, coho, and chum salmon.

(b) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(c) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8 a.m. to 12 a.m. (midnight).	August 29

(a) It is unlawful to retain sockeye salmon; and those salmon required to be released must be done so immediately.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 a.m. to 9 p.m.	August 29

It is unlawful to retain Chinook and sockeye salmon at all times, and it is unlawful to retain chum and wild coho salmon prior to October 1. It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(4) Waters north and west of the Area 7 "East Point Line" (a line projected from the low water range marker in Boundary Bay on the International Boundary, through the east tip of Point Roberts in the state of Washington, to the east Point light on Saturma Island in the Province of British Columbia) are closed to commercial harvest of salmon previously described in the above sections.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030) are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. August 29, 2007:

WAC 220-47-50100A Puget Sound all-citizen commercial salmon fishery (07-196)

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. August 30, 2007:

WAC 220-47-50100B Puget Sound all-citizen commercial salmon fishery.

**WSR 07-18-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-202—Filed August 29, 2007, 4:31 p.m., effective August 29, 2007, 4:31 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35200E; and amending WAC 232-28-352.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

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 change is necessary for public welfare and allowing all hunters to hunt public lands within this geographic area.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 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: August 29, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-35200E 2006-2008 Elk general seasons and definitions. Notwithstanding the provisions of WAC 232-28-352, effective immediately through December 15, 2007, under western Washington, modern firearm and early archery seasons, all references regarding Elk Area 6064 are changed to apply to Elk Area 6063 instead. Under late archery for western Washington, November 21 - December 15, change the "AHE Master Hunters only in Elk Area" from 6064 to 6063.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. December 15, 2007:

WAC 232-28-35200E 2006-2008 Elk general seasons and definitions.

**WSR 07-18-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-199—Filed August 30, 2007, 2:42 p.m., effective September 3, 2007]

Effective Date of Rule: September 3, 2007.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relation-

ship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *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: Opens 2007 select area fall season commercial fishery. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. Harvestable salmon and sturgeon are available. The season is consistent with the 2005-2007 interim management agreement and the 2007 non-Indian allocation agreement. Regulation is consistent with compact action of July 26, 2007. 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency

rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: August 30, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-33-01000M Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections:

1. **Blind Slough/Knappa Slough Select Area.**

a. OPEN AREA: Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge. Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights from September 4 through September 14 and Monday, Tuesday, Wednesday, and Thursday nights from September 17 through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 6:00 p.m. to 8:00 a.m. thereafter. Blind Slough area only during September 4 through September 14 and both Blind Slough and Knappa Slough areas during September 17 through October 26.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

2. Tongue Point/South Channel Select Area.

a. OPEN AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights from September 4 through September 14 and Monday, Tuesday, Wednesday, and Thursday nights from September 17 through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

3. Deep River Select Area. .

a. OPEN AREA: Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from September 3 through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gill net. Monofilament gear is allowed. The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel

4. ALLOWABLE SALES: Applies to all seasons stated in items 1-3: Salmon and sturgeon. A maximum of five white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only. Green sturgeon retention is prohibited.

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 October 27, 2007:

WAC 220-33-01000M Columbia River season below Bonneville.

WSR 07-18-051 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-203—Filed August 30, 2007, 4:32 p.m., effective September 2, 2007, 12:01 a.m.]

Effective Date of Rule: September 2, 2007, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000L; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The coho quota for Catch Record Card Area 2 can afford a transfer to Catch Record Area 1 in order to reopen Area 1. There is insufficient time to promulgate 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: August 30, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-62000M Coastal salmon seasons. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. September 2, 2007, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Area 1** - Open through September 30, 2007, daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

(2)(2) Areas 2, 2-1, and 2-2:

(a) **Area 2** - Open through September 16, 2007, daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

(b) **Area 2-1** - Open until further notice, daily limit 6 salmon, not more than three of which may be adult salmon, of which only 2 may be Chinook. Release chum.

(c) **Area 2-2** west of the Buoy 13 line - Closed until further notice.

(d) Those waters within a line from the lighthouse 1 mile south of the south jetty to Buoy No. 2, then to Buoy No. 3, then to the tip of the north jetty, then to the exposed end of the south jetty, are closed until further notice.

(3) **Area 3** - Open through September 15, 2007, daily limit 2 salmon, not more than one of which may be a Chinook, except release wild coho, daily limit may include 1 additional pink.

(4) Area 4:

(a) Open through September 15, 2007, with the following area rules, limits, and species restrictions: open seven days per week, daily limit 2 salmon, not more than one of which may be a Chinook, except release chum and wild coho, daily limit may include 1 additional pink. Release Chinook east of the Bonilla-Tatoosh Line.

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 12:01 a.m. September 2, 2007:

WAC 232-28-62000L Coastal salmon seasons. (07-192)

WSR 07-18-052
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 31, 2007, 8:10 p.m., effective September 1, 2007]

Effective Date of Rule: September 1, 2007.

Purpose: This rule change is necessary to amend WAC 388-492-0070 How are my Washington combined application program (WASHCAP) food benefits calculated?, in order to be consistent with federally-approved changes to the shelter standards and threshold used to calculate WASHCAP benefits. The changes will be made permanent in a change currently underway with an intended adoption date of October 1, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

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 approved changes to the WASHCAP shelter standards will constitute an increase in food benefits for the vast majority of WASHCAP recipients. It is to the benefit of these recipients to provide the increased benefits as quickly as possible. Further, the conditions that precipitate the increase will be implemented in August 2007. Consistent with current change effective date rules, the increase should take place the following month (September 2007). Additionally, these changes need to be completed prior to the close of the current federal fiscal year (September 30, 2007).

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

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

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

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

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

Date Adopted: July 31, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-011, filed 10/6/06, effective 11/6/06)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

(1) We begin with your gross income.
(2) We subtract one hundred thirty-four dollars from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) ~~((Three hundred forty two))~~ Two hundred seventy-five dollars or more a month for shelter, we use three hundred fifty-four dollars as your shelter cost; or

(b) Less than ~~((three hundred forty two))~~ two hundred seventy-five dollars for shelter, we use one hundred seventy-one dollars as your shelter cost; and

(c) We add the current ~~((limited))~~ standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least ten dollars in food benefits each month.

WSR 07-18-057

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 31, 2007, 10:37 a.m., effective September 1, 2007]

Effective Date of Rule: September 1, 2007.

Purpose: The department is revising sections within chapter 388-106 WAC to amend the in-home classifications to allow for the additional consideration of hours for clients with complex behavioral and cognitive issues and for clients with extremely high needs for assistance with activities of daily living.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0100, 388-106-0110, and 388-106-0125.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Chapter 522, Laws of 2007 (SHB 1128).

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

Reasons for this Finding: The department must adopt rules to meet requirements of the individual provider home care worker collective bargaining agreement (CBA), approved and funded by the Washington state legislature in the 2007-09 omnibus operating budget. DSHS long-term care budget notes state "effective September 1, 2007, ...certain hours of work for providers caring for clients with complex behavioral and cognitive issues will be increased." A CR-101 was filed as WSR 07-15-048 on July 13, 2007.

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 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 16, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0100 How does the CARE tool measure mood and behaviors? (1) When you do not meet the criteria for the clinically complex classification group, or the criteria for exceptional care, or for in-home only have a cognitive performance scale score of five or six, then the mood and behavior criteria listed in subsections (3) and (4) below determines your classification group. If you are eligible for more than one "B" group classification based on the two methodologies, CARE will place you in the highest group for which you qualify.

(2) For each behavior that the CARE tool has documented, the department will determine a status as "current" or "past" as defined in WAC 388-106-0010.

(3) CARE places you in the mood and behavior classification group only if you have one or more of the behavior/moods that also meets the listed status, frequency, and alterability as identified in the following chart(~~(No other moods or behaviors documented by CARE will qualify you for the mood and behavior classification.)~~):

Behavior/Mood	AND Status, Frequency & Alterability
Assaultive	Current
Combative during personal care	Current
Combative during personal care	In past and addressed with current interventions
Crying tearfulness	Current, frequency 4 or more days per week
Delusions	In past, addressed with current interventions
Depression score (≥ 14) of 14 or greater	N/A
Disrobes in public	Current and not easily altered
Easily irritable/agitated	Current and not easily altered
Eats nonedible substances	Current
Eats nonedible substances	In past, addressed with current interventions
Hallucinations	Current
Hiding items	In past, addressed with current interventions
Hoarding/collecting	In past, addressed with current interventions
Mental health therapy/program	Need
Repetitive complaints/ questions	Current, daily
Repetitive complaints/ questions	In past, addressed with current interventions

Behavior/Mood	AND Status, Frequency & Alterability
Repetitive movement/ pacing	Current, daily
Resistive to care	Current
Resistive to care	In past, addressed with current interventions
Sexual acting out	Current
Sexual acting out	In past, addressed with current interventions
Spitting	Current and not easily altered
Spitting	In past, addressed with current interventions
Breaks/throws items	Current
Unsafe smoking	Current and not easily altered
Up at night and requires intervention	Current
Wanders exit seeking	Current
Wanders exit seeking	In past, addressed with current interventions
Wanders not exit seeking	Current
Wanders not exit seeking	In past, addressed with current interventions
Yelling/screaming	Current, frequency 4 or more days per week
((Key: > means greater than. >= means greater than or equal to.))	

or

(4) CARE places you in the mood and behavior classification group if you have a behavior point score greater than 1, your CPS score (as defined in WAC 388-106-0090) is greater than 2, and your ADL score (as defined in WAC 388-106-0105) is greater than 1.

Status	Intervention	Frequency	Weight
Past	No Intervention	N/A	0
Past	With Intervention	N/A	0.25
Current	N/A	1-3 days/wk	0.5
Current	N/A	4-6 days/wk	0.75
Current	N/A	Daily	1

Each current behavior (as shown in the table below) has a value from .5 to 6 depending on the severity and alterability. Each status combination (shown in the table above) has a weight from 0 to 1. Behavior points are determined by multiplying the value of each current behavior (from the list below) by the weight of the status combination (above). Behavior points for past behaviors will be determined by multiplying the easily altered value of the behavior from the table below by the appropriate weight from the table above (0 or .25).

The list of behaviors below is divided into categories. Each category has a point limit of how many points can be counted toward the total behavior point score as detailed below. The total behavior point score is determined by totaling the weight-adjusted values for each category below.

Behavior	Alterability Value	
	Easily Altered	Not Easily Altered
1. Crying and Tearfulness	.5	1
2. Easily Irritable/Agitated	.5	1

Behavior	Alterability Value	
	Easily Altered	Not Easily Altered
3. Obsessive about health or body functions	.5	1
4. Repetitive Physical Movement	.5	1
5. Hiding Items	.5	1
6. Hoarding/Collecting	.5	1
7. Inappropriate Verbal Noise	.5	1
8. Wanders, not exit seeking	.5	1
Maximum total points after adjusting for status for behaviors 1-8= 2		
9. Repetitive anxious complaints/questions	1	2
10. Rummaging through or takes others belongings	1	2
11. Verbally Abusive	1	2
12. Yelling/Screaming	1	2
13. Spitting	1	2
14. Unrealistic Fears	1	2
15. Accuses others of stealing	1	2
Maximum total points after adjusting for status for behaviors 9-15= 3		
16. Resistive to care with words/gestures	2	3
17. Up at night	2	3
18. Unsafe cooking	2	3
19. Inappropriate toiletting/menses activity	2	3
20. Unsafe smoking	2	3
21. Left home and gotten lost	2	3
22. Disrobes in public	2	3
Maximum total points after adjusting for status for behaviors 16-22= 4		
23. Injures self	4	5
24. Wanders/Exit seeking	4	5
25. Sexual acting out	4	5
26. Intimidating	4	5
27. Assaultive	4	5
28. Breaks, throws items	4	5
Maximum total points after adjusting for status for behaviors 23-28= 10		
29. Fire setting	5	6
30. Combative during care	5	6
31. Pica	5	6
32. Seeks vulnerable partners	5	6
Maximum total points after adjusting for status for behaviors 29-32= 12		

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0110 How does the CARE tool evaluate me for the exceptional care classification of in-home care? CARE places you in the exceptional care classifications for the in-home setting when the following criteria are met in either diagram 1 or 2:

Diagram 1
((You have one of the following diagnoses: <ul style="list-style-type: none"> ■ Quadriplegia; ■ Paraplegia; ■ ALS (Amyotrophic Lateral Sclerosis); ■ Parkinson's Disease; ■ Multiple Sclerosis; ■ Comatose; ■ Muscular Dystrophy; ■ Cerebral Palsy; ■ Post Polio Syndrome; or ■ TBI (traumatic brain injury);))
((AND))
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You require at least one of the following: <ul style="list-style-type: none"> ■ External catheter; ■ Intermittent catheter; ■ Indwelling catheter care; ■ Bowel program; ((or)) ■ Ostomy care; or ■ Total in Self Performance for Toilet Use.
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> ■ Active range of motion (AROM); or ■ Passive range of motion (PROM).
Diagram 2
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> ■ Active range of motion (AROM); or ■ Passive range of motion (PROM).
AND

All of the following apply: <ul style="list-style-type: none"> ■ You require IV nutrition support or tube feeding; ■ Your total calories received per IV or tube was greater than 50%; and ■ Your fluid intake <u>by IV or tube</u> is greater than 2 cups per day.
AND
You need assistance with one of the following, provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> ■ Dialysis; or ■ Ventilator/respirator.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0125 How does CARE use the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, ADLs as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110, to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following ((~~fourteen~~) seventeen) in-home groups.

Classification	ADL or Behavior Point Score	Group	Base Hours of Group
Group E Exceptional care = yes and Mood and behavior = yes or no and Cognitive performance score = 0-6	ADL Score 26-28	E High ((+4))	420
	ADL Score 22-25	E Med ((+3))	350
Group D Cognitive performance score = 4-6 and Clinically complex = yes and Mood and behavior = yes or no OR Cognitive performance score = 5-6 and Clinically complex = no and Mood and behavior = yes or no	ADL Score ((+8)) <u>25-28</u>	D High ((+2))	((240)) <u>280</u>
	<u>ADL Score 18-24</u>	<u>D Med-High</u>	<u>240</u>
	ADL Score 13-17	D Med ((+1))	190
	ADL Score 2-12	D Low ((+0))	145
Group C Cognitive performance score = 0-3 and Clinically complex = yes and Mood and behavior = yes or no	<u>ADL Score 25-28</u>	<u>C High</u>	<u>200</u>
	ADL Score 18- ((28)) <u>24</u>	C Med-High ((9))	180
	ADL Score 9-17	C Med ((8))	140
	ADL Score 2-8	C Low ((7))	((83)) <u>95</u>
Group B Mood and behavior = yes and Clinically complex = no and Cognitive performance score = 0-4 OR <u>Cognitive Performance score >2 and Behavior score >1 and ADL score >1</u> OR <u>Cognitive performance score >2 And ADL score ≥1</u>	ADL Score 15-28	B High ((+6))	155
	ADL Score 5-14	B Med ((+5))	90
	ADL Score 0-4	B Low ((+4))	52
	<u>Behavior Points 12 or higher</u>	<u>B High</u>	<u>155</u>
	<u>Behavior Points 7-11</u>	<u>B Med-High</u>	<u>110</u>
	<u>Behavior Points 5-6</u>	<u>B Med</u>	<u>90</u>
	<u>Behavior Points 1-4</u>	<u>B Low</u>	<u>52</u>
Group A Mood and behavior = no and Clinically complex = no and Cognitive performance score = 0-4	ADL Score 10-28	A High ((+3))	78
	ADL Score 5-9	A Med ((+2))	62
	ADL Score 0-4	A Low ((+1))	29

WSR 07-18-058
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 31, 2007, 10:54 a.m., effective September 1, 2007]

Effective Date of Rule: September 1, 2007.

Purpose: Rules for companion home residential services and alternative living services were permanently adopted in chapters 388-829A and 388-829C WAC as WSR 07-16-101 and 07-16-102. The new rules are effective September 1, 2007. The department is amending and repealing the rules in chapter 388-825 WAC that formerly addressed companion home residential services and alternative living services.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-825-316 and 388-825-381; and amending WAC 388-825-305, 388-825-320, 388-825-325, 388-825-340, 388-825-355, 388-825-370, 388-825-375, 388-825-385, 388-825-390, 388-825-395, and 388-825-396.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

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

Reasons for this Finding: The department is amending and repealing by emergency rule sections in chapter 388-825 WAC that correspond with the new WAC sections in chapters 388-829A and 388-829C WAC so that when the new rules become effective there is no conflict with rules in chapter 388-825 WAC. The department is concurrently amending and repealing the rules in chapter 388-825 WAC through the permanent rule-making process and has filed a proposed rule-making notice as WSR 07-16-091 with a public hearing on September 4, 2007.

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 11, Repealed 2.

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 11, Repealed 2.

Date Adopted: August 24, 2007.

Katherine D. Vasquez, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-305 What service providers are governed by the qualifications in these rules? These rules govern individuals and agencies contracted with to provide:

- (1) Respite care services;
- (2) ~~((Companion home services;~~
- ~~{3}))~~ Personal care services through the Medicaid personal care program or DDD HCBS Basic, Basic Plus, or CORE waivers; or
- ~~(((4) Alternative living services; or~~
- ~~{5}))~~ (3) Attendant care services.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-320 How does a person become an individual provider~~((companion home provider or an alternative living provider))~~? In order to become an individual provider, ~~((companion home provider or an alternative living provider,))~~ a person must:

- (1) Be eighteen years of age or older.
- (2) Provide the social worker/case manager/designee with:
 - (a) Picture identification; and
 - (b) A Social Security card.
- (3) Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW.
 - (a) Preliminary results may require a thumbprint for identification purposes.
 - (b) An FBI fingerprint-based background check is required if the person has lived in the state of Washington less than three years.
- (4) Provide references as requested.
- (5) Complete orientation, if contracting as an individual provider.
- (6) Sign a service provider contract to provide services to a DDD client.
- (7) Meet additional requirements in WAC 388-825-355.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, ~~((companion home services,))~~ personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus or CORE waivers, ~~((alternative living services))~~ or attendant care services?

- (1) As a provider of respite care, ~~((companion home services,))~~ personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus, or CORE waivers, ~~((alternative living services))~~ or attendant care services, you must be able to:
 - (a) Adequately maintain records of services performed and payments received;

(b) Read and understand the person's service plan. Translation services may be used if needed;

(c) Be kind and caring to the DSHS client for whom services are authorized;

(d) Identify problem situations and take the necessary action;

(e) Respond to emergencies without direct supervision;

(f) Understand the way your employer wants you to do things and carry out instructions;

(g) Work independently;

(h) Be dependable and responsible;

(i) Know when and how to contact the client's representative and the client's case resource manager;

(j) Participate in any quality assurance reviews required by DSHS;

(2) If you are working with an adult client of DSHS as a provider of (~~alternative living~~) attendant care (~~(or companion home services)~~), you must also:

(a) Be knowledgeable about the person's preferences regarding the care provided;

(b) Know the resources in the community the person prefers to use and enable the person to use them;

(c) Know who the person's friends are and enable the person to see those friends; and

(d) Enable the person to keep in touch with his/her family as preferred by the person.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-340 What is required for a provider to provide respite or residential service in their home?

Unless you are related to the client, (~~or the client lives in a companion home~~), respite or residential services must take place in a home licensed by DSHS. Services are limited to those age-specific services contained in your license.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services(~~(companion home services, or alternative living services)~~)? (1) If you are an individual providing personal care services for adults, you must meet the training requirements in WAC 388-71-05665 through 388-71-05909.

(2) (~~If you are an individual contracted to provide companion home services or alternative living services, you must:~~

(a) Have a high school diploma or GED;

(b) ~~Successfully complete DDD specialty training within the first six months of beginning service; and~~

(c) ~~Complete ten hours of continuing education related to the job responsibilities each subsequent calendar year.~~

(3)) If you provide personal care for children, or provide respite care, there is no required training but DDD retains the authority to require training of any provider.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-370 What are the responsibilities of an individual or home care agency when employed to provide respite care, attendant care, or personal care(~~(companion home services or alternative living)~~) services to a client? An individual or home care agency employed to provide respite care, attendant care, or personal care(~~(companion home services, or alternative living)~~) services must:

(1) Understand the client's individual service plan or plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's service plan, within the scope of practice in WAC 388-71-0215 and 388-71-0230;

(3) Accommodate client's individual preferences and differences in providing care, within the scope of the service plan;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the service plan;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department immediately when unable to staff/serve the client; and

(9) Notify the department when the individual or home care agency will no longer provide services. Notification to the client/legal guardian must:

(a) Give at least two weeks' notice, and

(b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws, regulations and contract requirements.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, or personal care(~~(companion home services or alternative living)~~) services? (1) The department will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care(~~(companion home services or alternative living services)~~) who:

(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(b) Is providing services under this chapter to their natural/step/adoptive minor client aged seventeen or younger;

(c) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(d) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(e) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(f) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05909; or

(g) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(2) ~~((The department will deny payment for the services of an individual or a home care agency providing companion home services or alternative living services to their natural/step/adoptive adult child.~~

~~(3) The department will deny payment for services of a legal representative appointed by the courts providing companion home services to the client for whom they are the legal representative.~~

(4)) In addition, the department may deny payment to or terminate the contract of an individual provider as provided under WAC 388-825-380, 388-825-381, 388-825-385 and 388-825-390.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-385 When can the department terminate or summarily suspend an individual respite care, attendant care, or personal care(~~(-companion home services or alternative living services))~~ provider's contract? The department may take action to terminate an individual respite care, attendant care, or personal care(~~(-companion home services or alternative living services))~~ provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. The department may summarily or immediately suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client could include, without limitation:

(1) Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult;

(2) Using or being under the influence of alcohol or illegal drugs during working hours;

(3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;

(5) A complaint from the client or client's representative that the client is not receiving adequate care;

(6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or

(7) Failure to respond appropriately to emergencies.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-390 When can the department otherwise terminate an individual's contract to provide respite care, attendant care, or personal care(~~(-companion home services or alternative living services))~~? The department may otherwise terminate the individual's contract to provide respite care, attendant care, or personal care(~~(-companion home services or alternative living services))~~ for default or convenience in accordance with the terms of the contract and to the extent that those terms are not inconsistent with these rules.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-395 What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care(~~(-companion home services or alternative living services))~~? If the department denies, terminates, or summarily (immediately) suspends the individual's contract to provide respite care, attendant care, or personal care, (~~(companion home services or alternative living services,))~~ the client has the right to:

(1) A fair hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120; and

(2) Receive services from another currently contracted individual or home care agency, or other options the client is eligible for, if a contract is summarily suspended.

(3) The hearing rights afforded under this section are those of the client, not the individual provider.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-396 Does the provider of respite care, attendant care, or personal care(~~(-companion home services or alternative living services))~~ have a right to a fair hearing? (1) The hearing rights afforded under WAC 388-825-395(1) are those of the client.

(2) The provider of respite care, attendant care, or personal care(~~(-companion home services or alternative living))~~ services does not have a right to a fair hearing.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-316 How do I choose a companion home or alternative living provider?

WAC 388-825-381 When can the department reject the client's choice of a companion home services or alternative living services provider?

WSR 07-18-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-204—Filed August 31, 2007, 12:56 p.m., effective August 31, 2007, 12:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100C.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized pink-targeted fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries that are not expected to exceed chinook by-catch levels modeled during the preseason process. There is insufficient time to promulgate 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: August 31, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-50100C Puget Sound all-citizen commercial salmon fishery. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) Purse Seines - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Table with 2 columns: Hours, Dates. Row 1: 5 AM to 9 PM daily for vessels fishing using an operating recovery box throughout the entire open period. Row 2: 9 AM to 9 PM daily for vessels NOT using an operating recovery box throughout the entire open period.

(a) It is unlawful to retain chinook, sockeye, coho, and chum salmon.

(b) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net, meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water, except all salmon must be immediately sorted and those required to be released, must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(c) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) Gill Nets - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Table with 2 columns: Hours, Dates. Row 1: 8 AM to 12 AM (midnight). Row 2: 9/1, 9/2

(a) It is unlawful to retain sockeye salmon, and those salmon required to be released must be done so immediately.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Table with 2 columns: Hours, Dates. Row 1: 5 AM to 9 PM. Row 2: 9/1, 9/2, 9/3

It is unlawful to retain chinook and sockeye salmon at all times, and it is unlawful to retain chum and wild coho salmon prior to October 1. It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(4) Waters north and west of the Area 7 "East Point Line" (a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the state of Washington to the east Point light on Saturna Island in the Province of British Columbia) are closed to commercial harvest of salmon previously described in the above sections.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery openings under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030) are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. September 3, 2007:

WAC 220-47-50100C Puget Sound all-citizen commercial salmon fishery.

**WSR 07-18-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed September 3, 2007, 5:46 p.m., effective September 3, 2007, 5:46 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-47-50100D.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This regulation provides for PSC authorized pink-targeted fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries that are not expected to exceed chinook by-catch levels modeled during the preseason process. There is insufficient time to promulgate 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: September 3, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-50100D Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 AM to 9 PM daily for vessels fishing using an operating recovery box throughout the entire open period.	September 4 and 5, 2007
9 AM to 9 PM daily for vessels NOT using an operating recovery box throughout the entire open period.	September 4 and 5, 2007

(a) It is unlawful to retain Chinook, sockeye, coho, and chum salmon.

(b) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. Once aboard, all salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(c) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8 AM to 11:59 PM (mid-night).	September 4 and 5, 2007

(a) It is unlawful to retain sockeye salmon, and those salmon required to be released must be done so immediately.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 AM to 9 PM.	September 4 and 5, 2007

It is unlawful to retain Chinook and sockeye salmon at all times, and it is unlawful to retain chum and wild coho salmon prior to October 1. It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(4) Waters north and west of the Area 7 "East Point Line" (a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the state of Washington to the east Point light on Saturma Island in the Province of British Columbia) are closed to commercial harvest of salmon previously described in the above sections.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery openings under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required," per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. on September 5, 2007:

WAC 220-47-50100D Puget Sound all-citizen commercial salmon fishery.

**WSR 07-18-092
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-206—Filed September 5, 2007, 11:37 a.m., effective September 5, 2007, 11:37 a.m.]

Effective Date of Rule: Immediately.

Purpose: To implement the provisions of ESHB 1249 relating to a once in a lifetime, one-license-year deferral of hunter education classes for people who are accompanied by a nondeferred, Washington licensed hunter.

Statutory Authority for Adoption: RCW 77.12.047.

Other Authority: ESHB 1249.

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: A new law, ESHB 1249, became effective on July 22, 2007. The law requires the Washington fish and wildlife commission to adopt rules for the implementation of the hunter-deferral program to avoid potential fraud and abuse. An emergency rule is needed to achieve this until the permanent rule becomes effective.

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 0, Repealed 0.

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

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

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

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

Date Adopted: September 5, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-12-228 Hunter education deferral. (1) Pursuant to RCW 77.32.155, individuals may apply for a director-authorized, once in a lifetime, one-license-year deferral of hunter education training. To qualify, the applicant for deferral and his or her accompanying, licensed hunter must comply with the following requirements:

(a) The applicant for deferral must be at least eight years of age when applying for the deferral.

(b) The accompanying, licensed hunter, as defined in RCW 77.32.155, must:

(i) Be over eighteen years of age; and

(ii) Provide proof that he or she had a Washington hunting license for the three years prior to being an accompanying, licensed hunter.

(c) To provide maximum supervision and to enhance safety afield, an accompanying, licensed hunter must supervise only one deferred hunter while afield.

(2) Application procedures.

(a) Applicants for deferral must submit their applications to the department's hunter education division office in Olympia, Washington.

(b) Applicants for deferral must submit with each deferral application a twenty-dollar application fee payable via personal or cashier's check written to WDFW. Applications submitted without the required fee or information will not be processed and will be returned to the applicant.

(c) Deferral applications will be on forms prescribed by the department and may be made available to the public in both printed and electronic formats.

(3) License purchases.

(a) Individuals granted a deferral under this section will receive a special WILD identification number and a special authorization card that allow the applicant to purchase hunting licenses and tags for the license year during which the applicant requested a deferral. An applicant may not use his or her special WILD identification number and special authorization card for future hunting license purchases in Washington state.

(b) Individuals deferred under this administrative regulation:

(i) May purchase hunting licenses and tags in accordance with current licensing procedures; and

(ii) Must pay all hunting license and tag fees established under current law.

(4) Possession of deferral authorization.

(a) Individuals hunting with a deferral under this administrative regulation must carry their department-issued deferral card at all times while hunting.

(b) Request for replacement of deferral cards must be made by the licensee. A duplicate deferral card may be issued at department offices.

(5) If either the deferred education licensee or the required nondeferred accompanying person, hunting under the authority of RCW 77.32.155(2), is convicted of a violation of this title, except for a violation of RCW 77.15.400 (1) through (3), the department may revoke all hunting licenses and tags and may order a suspension of one or both the deferred education licensee and the nondeferred accompanying person's hunting privileges for one year.