

**WSR 07-23-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed November 16, 2007, 9:03 a.m., effective November 16, 2007, 9:03 a.m.]

Effective Date of Rule: Immediately.

Purpose: The Washington state legislature adopted SSB 5244 (chapter 143, Laws of 2007), which implements changes required by the federal Deficit Reduction Act of 2005 (DRA). 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 filed emergency rules under WSR 07-16-023, effective July 22, 2007, and at the same time filed the preproposal statement of inquiry to start the regular rule-making process for these rules (WSR 07-10-116).

DCS has developed policies and procedures and revised the proposed rules as needed. The draft rules have gone 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 November 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 ~~((eustodial 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 ~~((non-custodial))~~ 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 ~~((non-custodial))~~ 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 ~~((non-custodial))~~ obligated parent is not yet eligible for coverage?, 388-14A-4145 What must the plan administrator do when the insurance plan in which the ~~((non-custodial))~~ 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 ~~((non-custodial))~~ obligated parent has more than one family?, 388-14A-4160 Are there any limits on the amount ~~((a non-custodial))~~ 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 and 9, chapter 143, Laws of 2007.

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

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 SSB 5244 (chapter 143, Laws of 2007), which implements 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. SSB 5244 was effective July 22, 2007. DCS must have rules in effect, or risk loss of federal funds for noncompliance. DCS continues the regular rule-making process but was unable to finalize the adoption of the rules within the time limit of the first emergency rule.

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: November 7, 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;

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

~~((f))~~ (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

~~((g))~~ (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.

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," ((☞)) "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 07-24-029  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed November 28, 2007, 1:37 p.m., effective November 28, 2007, 1:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is creating WAC 388-828-9000, 388-828-9020, 388-828-9040, 388-828-9060, 388-828-9100, 388-828-9120 and 388-828-9140, to combine three family support programs into one individual and family services program as directed by the legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 388-828-5360.

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: Chapter 283, Laws of 2007 (2SSB 5467) directs the department to create the individual and family services programs for persons with developmental disabilities by July 1, 2007. DDD must incorporate rules for the algorithm used to determine a personal award amount into chapter 388-828 WAC. DDD is also amending WAC 388-828-5360 to correct the backup caregiver availability table, which is part of the individual and family services algorithm.

An initial public notice was filed June 29, 2007, as WSR 07-15-081. Stakeholder work is being completed and the rules are expected to be formally proposed in February 2008.

This emergency rule will replace the emergency rule filed as WSR 07-22-016.

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 7, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 1, Repealed 0.

Date Adopted: November 28, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-5360 How does DDD determine the risk level score of your backup caregiver not being able to provide the supports you need when you need them?** The following table identifies the criteria that are used to calculate the risk level score of your backup caregiver not being able to provide the supports you need when you need them:

If the availability of your backup caregiver is:	Then your risk level score is:
(1) Your backup caregivers are available routinely or upon request as evidenced by a score of 0 to 2 for question 1 of the backup caregiver subscale; and (2) You have a person identified as a backup caregiver that does not live with you evidenced by the "Lives with client" checkbox not being selected as contact details information for him or her.	1 (Not at risk)
(3) Your backup caregivers are available upon an emergency only basis evidenced by a score of 4 for question 1 of the backup caregiver subscale; <del>(and)</del> <u>or</u> (4) "Lives with client" has been selected for <b>all</b> of the persons you have identified as your backup caregivers.	2 (Some risk)
(5) You have no other caregiver available evidenced by a score of 9 for question 1 of the backup caregiver subscale.	3 (High risk)

**Chapter 388-828 WAC**

**INDIVIDUAL AND FAMILY SERVICES  
ASSESSMENT**

NEW SECTION

**WAC 388-828-9000 What is the individual and family services assessment?** The individual and family services assessment is an algorithm in the DDD assessment that determines an award amount that you may receive if DDD has

authorized you to receive individual and family services per chapter 388-832 WAC.

NEW SECTION

**WAC 388-828-9020 What is the purpose of the individual and family services assessment?** The purpose of the individual and family services assessment is to determine your individual and family services level and score using your assessed support levels from:

(1) The DDD protective supervision acuity scale (See WAC 388-828-5000 to WAC 388-828-5100);

(2) The DDD caregiver status acuity scale (See WAC 388-828-5120 to WAC 388-828-5360);

(3) The DDD behavioral acuity scale; (See WAC 388-828-5500 to WAC 388-828-5640)

(4) The DDD medical acuity scale; (See WAC 388-828-5660 to WAC 388-828-5700); and

(5) The DDD activities of daily living (ADL) acuity scale (See WAC 388-828-5380 to WAC 388-828-5480)

NEW SECTION

**WAC 388-828-9040 How does DDD determine your individual and family services level?** (1) DDD determines your individual and family services level using the following table:

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
0	None	1	None	1
0	None	1	Low	1
0	None	1	Medium	1
0	None	1	High	2
0	None	2 or 3	None	1
0	None	2 or 3	Low	1
0	None	2 or 3	Medium	2
0	None	2 or 3	High	2
0	Low	1	None	1
0	Low	1	Low	1
0	Low	1	Medium	1
0	Low	1	High	2
0	Low	2 or 3	None	1
0	Low	2 or 3	Low	1
0	Low	2 or 3	Medium	2
0	Low	2 or 3	High	2
0	Medium	1	None	1
0	Medium	1	Low	1
0	Medium	1	Medium	1
0	Medium	1	High	2
0	Medium	2 or 3	None	1
0	Medium	2 or 3	Low	1
0	Medium	2 or 3	Medium	2
0	Medium	2 or 3	High	2
0	High	1	None	1
0	High	1	Low	1
0	High	1	Medium	2
0	High	1	High	2
0	High	2 or 3	None	2
0	High	2 or 3	Low	2
0	High	2 or 3	Medium	2
0	High	2 or 3	High	3
0	Immediate	1	None	1
0	Immediate	1	Low	1
0	Immediate	1	Medium	2
0	Immediate	1	High	2
0	Immediate	2 or 3	None	2
0	Immediate	2 or 3	Low	2

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
0	Immediate	2 or 3	Medium	2
0	Immediate	2 or 3	High	3
1	None	1	None	1
1	None	1	Low	1
1	None	1	Medium	1
1	None	1	High	2
1	None	2 or 3	None	1
1	None	2 or 3	Low	1
1	None	2 or 3	Medium	2
1	None	2 or 3	High	3
1	Low	1	None	1
1	Low	1	Low	1
1	Low	1	Medium	1
1	Low	1	High	2
1	Low	2 or 3	None	1
1	Low	2 or 3	Low	1
1	Low	2 or 3	Medium	2
1	Low	2 or 3	High	3
1	Medium	1	None	1
1	Medium	1	Low	1
1	Medium	1	Medium	2
1	Medium	1	High	3
1	Medium	2 or 3	None	1
1	Medium	2 or 3	Low	2
1	Medium	2 or 3	Medium	2
1	Medium	2 or 3	High	3
1	High	1	None	2
1	High	1	Low	2
1	High	1	Medium	2
1	High	1	High	3
1	High	2 or 3	None	2
1	High	2 or 3	Low	2
1	High	2 or 3	Medium	3
1	High	2 or 3	High	4
1	Immediate	1	None	2
1	Immediate	1	Low	2
1	Immediate	1	Medium	2
1	Immediate	1	High	3
1	Immediate	2 or 3	None	2
1	Immediate	2 or 3	Low	2
1	Immediate	2 or 3	Medium	3
1	Immediate	2 or 3	High	4
2 or 3	None	1	None	1
2 or 3	None	1	Low	1
2 or 3	None	1	Medium	2

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
2 or 3	None	1	High	3
2 or 3	None	2 or 3	None	2
2 or 3	None	2 or 3	Low	2
2 or 3	None	2 or 3	Medium	2
2 or 3	None	2 or 3	High	4
2 or 3	Low	1	None	1
2 or 3	Low	1	Low	1
2 or 3	Low	1	Medium	2
2 or 3	Low	1	High	3
2 or 3	Low	2 or 3	None	2
2 or 3	Low	2 or 3	Low	2
2 or 3	Low	2 or 3	Medium	2
2 or 3	Low	2 or 3	High	4
2 or 3	Medium	1	None	2
2 or 3	Medium	1	Low	2
2 or 3	Medium	1	Medium	2
2 or 3	Medium	1	High	3
2 or 3	Medium	2 or 3	None	2
2 or 3	Medium	2 or 3	Low	2
2 or 3	Medium	2 or 3	Medium	3
2 or 3	Medium	2 or 3	High	4
2 or 3	High	1	None	2
2 or 3	High	1	Low	2
2 or 3	High	1	Medium	2
2 or 3	High	1	High	3
2 or 3	High	2 or 3	None	2
2 or 3	High	2 or 3	Low	2
2 or 3	High	2 or 3	Medium	3
2 or 3	High	2 or 3	High	4
2 or 3	Immediate	1	None	2
2 or 3	Immediate	1	Low	2
2 or 3	Immediate	1	Medium	2
2 or 3	Immediate	1	High	3
2 or 3	Immediate	2 or 3	None	2
2 or 3	Immediate	2 or 3	Low	2
2 or 3	Immediate	2 or 3	Medium	3
2 or 3	Immediate	2 or 3	High	4
4	None	1	None	2
4	None	1	Low	2
4	None	1	Medium	2
4	None	1	High	3
4	None	2 or 3	None	2
4	None	2 or 3	Low	2
4	None	2 or 3	Medium	3
4	None	2 or 3	High	4

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
4	Low	1	None	2
4	Low	1	Low	2
4	Low	1	Medium	2
4	Low	1	High	3
4	Low	2 or 3	None	2
4	Low	2 or 3	Low	2
4	Low	2 or 3	Medium	3
4	Low	2 or 3	High	4
4	Medium	1	None	2
4	Medium	1	Low	2
4	Medium	1	Medium	3
4	Medium	1	High	3
4	Medium	2 or 3	None	2
4	Medium	2 or 3	Low	3
4	Medium	2 or 3	Medium	3
4	Medium	2 or 3	High	4
4	High	1	None	2
4	High	1	Low	2
4	High	1	Medium	3
4	High	1	High	3
4	High	2 or 3	None	2
4	High	2 or 3	Low	3
4	High	2 or 3	Medium	4
4	High	2 or 3	High	4
4	Immediate	1	None	2
4	Immediate	1	Low	2
4	Immediate	1	Medium	3
4	Immediate	1	High	3
4	Immediate	2 or 3	None	2
4	Immediate	2 or 3	Low	3
4	Immediate	2 or 3	Medium	4
4	Immediate	2 or 3	High	4
5	None	1	None	2
5	None	1	Low	2
5	None	1	Medium	3
5	None	1	High	4
5	None	2 or 3	None	3
5	None	2 or 3	Low	3
5	None	2 or 3	Medium	4
5	None	2 or 3	High	5
5	Low	1	None	2
5	Low	1	Low	2
5	Low	1	Medium	3
5	Low	1	High	4
5	Low	2 or 3	None	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
5	Low	2 or 3	Low	3
5	Low	2 or 3	Medium	4
5	Low	2 or 3	High	5
5	Medium	1	None	2
5	Medium	1	Low	2
5	Medium	1	Medium	3
5	Medium	1	High	4
5	Medium	2 or 3	None	3
5	Medium	2 or 3	Low	3
5	Medium	2 or 3	Medium	4
5	Medium	2 or 3	High	5
5	High	1	None	2
5	High	1	Low	2
5	High	1	Medium	3
5	High	1	High	4
5	High	2 or 3	None	3
5	High	2 or 3	Low	3
5	High	2 or 3	Medium	4
5	High	2 or 3	High	5
5	Immediate	1	None	2
5	Immediate	1	Low	2
5	Immediate	1	Medium	3
5	Immediate	1	High	4
5	Immediate	2 or 3	None	3
5	Immediate	2 or 3	Low	3
5	Immediate	2 or 3	Medium	4
5	Immediate	2 or 3	High	5
6	None	1	None	2
6	None	1	Low	3
6	None	1	Medium	3
6	None	1	High	4
6	None	2 or 3	None	3
6	None	2 or 3	Low	3
6	None	2 or 3	Medium	4
6	None	2 or 3	High	5
6	Low	1	None	2
6	Low	1	Low	3
6	Low	1	Medium	3
6	Low	1	High	4
6	Low	2 or 3	None	3
6	Low	2 or 3	Low	3
6	Low	2 or 3	Medium	4
6	Low	2 or 3	High	5
6	Medium	1	None	3
6	Medium	1	Low	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
6	Medium	1	Medium	3
6	Medium	1	High	4
6	Medium	2 or 3	None	3
6	Medium	2 or 3	Low	4
6	Medium	2 or 3	Medium	4
6	Medium	2 or 3	High	5
6	High	1	None	3
6	High	1	Low	3
6	High	1	Medium	4
6	High	1	High	4
6	High	2 or 3	None	4
6	High	2 or 3	Low	4
6	High	2 or 3	Medium	5
6	High	2 or 3	High	5
6	Immediate	1	None	3
6	Immediate	1	Low	3
6	Immediate	1	Medium	4
6	Immediate	1	High	4
6	Immediate	2 or 3	None	4
6	Immediate	2 or 3	Low	4
6	Immediate	2 or 3	Medium	5
6	Immediate	2 or 3	High	5

(2) DDD adds one level to your individual and family services level when your individual and family services level is determined to be:

(a) Level one, two, three, or four; and

(b) You have a score of four for question two "Other caregiving for persons who are disabled, seriously ill, or under five" in the DDD caregiver status acuity scale. See WAC 388-828-5260.

If your individual and family services level is:	Then your individual and family services support rating is:
1	0
2	240
3	336
4	432
5	528

**NEW SECTION**

**WAC 388-828-9060 How does DDD determine your individual and family services rating?** (1) Your individual and family services rating is determined by using the following table:

(1)

If your individual and family services level is 1, 2, 3, 4, or 5 and you are not receiving Medicaid personal care	And your ADL support needs level for the SIS per WAC 388-828-5480				
	None	Low	Medium	High	
And your medical acuity level per WAC 388-828-5700	None	57	57	76	85
	Low	57	57	76	85
	Medium	57	88	122	145
	High	57	145	245	287

**NEW SECTION**

**WAC 388-828-9100 How does DDD determine the number to use in the adjustment of your individual and family services support rating?** DDD determines the amount of the adjustment for your individual and family services support rating using the following tables:

(2)

If your individual and family services level is 1, 2, 3, 4, or 5 and you are receiving Medicaid personal care per chapter 388-106 WAC		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	0	0	0	0
	Low	0	0	0	0
	Medium	0	0	0	0
	High	0	0	0	0

Example: If your individual and family service level is 3 and you are not receiving Medicaid personal care services and your ADL support needs level is "low" and your medical acuity level is "medium," the amount of your adjustment is 88.

**NEW SECTION**

**WAC 388-828-9120 How does DDD determine your individual and family services score?** DDD adds your individual and family support rating from WAC 388-828-9060 to the adjustment amount in WAC 388-828-9100 to determine your individual and family services score.

Example: If you are not receiving medicaid personal care services and your individual and family services support rating is 336 and the amount of your adjustment is 122, your individual and family services score is 458.

**NEW SECTION**

**WAC 388-828-9140 How does DDD determine the amount of your individual and family service award?** DDD uses the following table to determine the amount of your individual and family services award:

If your individual and family services score is:	Then the amount of your award is up to:
0 to 60	No Award
61 to 240	\$2000
241 to 336	\$3000
337 to 527	\$4000
528 or more	\$6000

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: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottom fish, while reserving brood stock for future fisheries. 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: December 5, 2007.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 220-44-05000U Coastal bottomfish catch limits.** Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottomfish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 72, Number 232 published on December 4, 2007. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

**WSR 08-01-004  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-288—Filed December 5, 2007, 4:09 p.m., effective December 5, 2007, 4:09 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000T; and amending WAC 220-44-050.

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

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl, and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for the National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000T Coastal bottomfish catch limits. (07-246)

**WSR 08-01-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-289—Filed December 6, 2007, 4:27 p.m., effective December 6, 2007, 4:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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: Pot limits will reduce the crowding effect in this restricted area. An increase in the temporary reduced pot limit will provide relief to fishers that have lost gear due to severe weather conditions. 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; and Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: December 6, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-52-04000Q Commercial crab fishery. Lawful and Unlawful gear, methods and other unlawful acts.** (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean through January 31, 2008 from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel hold inspection certificates dated from November 30, 2007 to December 27, 2007 are only valid for the area south of 46°28.00.

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through January 31, 2008.

(2) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice it is unlawful for person participating in the Columbia River, Coastal or Willapa Bay commercial Dungeness crab fishery to:

(a) deploy or operate more than 450 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500

(b) deploy or operate more than 275 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300

(c) fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(3) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena CA, including Willapa Bay and the Columbia River may possess crab for delivery into Washington ports south of 47°00.00 N. Lat. provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and provides a vessel hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator calls 360-249-4628 extension 253 and reports the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time and location of delivery 24 hours prior to entering the area.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000P	Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (07-286)
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**WSR 08-01-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-287—Filed December 7, 2007, 1:57 p.m., effective December 7, 2007, 1:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend ballast water rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-77-0900C and 220-77-09500A; and amending WAC 220-77-090 and 220-77-095.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: A new law, E2SSB 5923, became effective on July 22, 2007. The law regulates the control of aquatic invasive species (AIS) and the management of ballast water. Ballast water can carry chemicals, other pollutants, and AIS, making it a significant risk to the marine and fresh waters of the state, and therefore to the health, safety, and general welfare of Washington residents. It is vitally important to prevent the introduction of AIS and ballast-water pollution because once introduced, they are very difficult and costly to eradicate. These rules are interim until permanent rules takes effect.

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

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

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

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

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

Date Adopted: December 7, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-77-0900D Ballast water management and control—Reporting and sampling requirements.** Notwithstanding the provisions of WAC 220-77-090:

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

(a) The department, at ballastwater@dfw.wa.gov or 360-902-2845, for any vessel entering state waters at any location; or

(b) The Marine Exchange of Puget Sound in Seattle, at waballast@aol.com or 206-443-3839, for vessels bound for Puget Sound or coastal ports; or

(c) The Merchants Exchange of Portland, at marine.room@pdxmex.com or 503-295-3660, for vessels bound for Washington ports on the Columbia River.

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

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

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

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

(iii) A statement that if the vessel does need to discharge on a voyage, they will file a ballast water report 24 hours prior to discharge; and

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

(b) Vessels that would normally discharge ballast water, but will not discharge on a particular trip, may file the ballast water reporting form at least twenty-four hours prior to entering Washington waters, with "NOT DISCHARGING" written in the ballast water history section.

(3) The department, or designated representatives, may at reasonable times and in a reasonable manner, during a vessel's scheduled stay in port, take samples of ballast water and sediment, may examine ballast water management records, and may make other appropriate inquiries to assess the compliance of vessels with ballast water reporting and control requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Vessel and operator violation history.

**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.

#### NEW SECTION

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

(1) The Washington state interim ballast water discharge standard is inactivation or removal of ninety-five percent of zooplankton organisms and ninety-nine percent of phytoplankton and bacteria organisms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Documentation verifying that the residual concentrations of any primary treatment chemicals or chemicals that occur as by-products of the treatment meet all applicable regulatory requirements; and

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

(g) Conditions of approval:

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

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

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

(iv) Nothing in these rules, ballast water legislation, or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other

state, federal, and international laws governing business, marine applications, or other elements.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-77-0900C	Ballast water management and control—Reporting and sampling requirements. (07-173)
WAC 220-77-09500A	Interim ballast water discharge standard approval process. (07-173)

**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.

**WSR 08-01-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-290—Filed December 11, 2007, 2:09 p.m., effective December 11, 2007, 2:09 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend wildlife rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-315.

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: Weather conditions have forced deer, elk and bighorn sheep to lower elevations, where harassment by dogs has been observed. In order to protect deer, elk and bighorn sheep, it is necessary to allow officers to take dogs into custody, and if necessary, destroy dogs. 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: December 11, 2007.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

**WAC 232-12-31500S Emergency for custody or destruction of dogs harassing deer, elk or bighorn sheep.** Effective immediately until further notice, an emergency is declared in the following Washington State counties, and making it permissible for Fish and Wildlife Officers to take into custody or destroy, if necessary, any dog that is pursuing, harassing, attacking or killing deer, elk or bighorn sheep.

- (1) Chelan County
- (2) Douglas County
- (3) Ferry County
- (4) Kitittas County
- (5) Lincoln County
- (6) Okanogan County
- (7) Pend Oreille County
- (8) Spokane County
- (9) Stevens County
- (10) Yakima County

**Reviser's note:** The spelling 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.

**WSR 08-01-049  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-291—Filed December 13, 2007, 9:59 a.m., effective December 15, 2007]

Effective Date of Rule: December 15, 2007.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The Kendall Creek hatchery in recent years has been unable to secure sufficient eggs from returning hatchery winter steelhead to meet basin production goals. Closure of the fishery, coupled with a broodstocking effort by volunteers and department staff, is expected to collect sufficient fish to meet egg take needs. 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 0, Amended 1, Repealed 0.

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

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

Date Adopted: December 13, 2007.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-61900Q Exceptions to statewide rules—North Fork Nooksack River.** Notwithstanding the provisions of WAC 232-28-619, effective December 15, 2007, until further notice, it is unlawful to fish in those waters of the North Fork Nooksack River from the yellow post located at the upstream most corner of the hatchery grounds approximately 1,000 feet upstream of the mouth of Kendall Creek, downstream to the Mosquito Lake Road Bridge.

**WSR 08-01-057  
EMERGENCY RULES  
BUILDING CODE COUNCIL**

[Filed December 14, 2007, 8:23 a.m., effective December 14, 2007, 8:23 a.m.]

Effective Date of Rule: Immediately.

Purpose: To extend the emergency rule for WAC 51-51-0302 (2006 International Residential Code) related to fire separation distance, previously adopted under WSR 07-17-092. The permanent rule for this section has been adopted and will go into effect April 1, 2008.

Citation of Existing Rules Affected by this Order:  
Amending WAC 51-51-0302.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 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:

**DECLARATION OF EMERGENCY AND  
FINDINGS TO SUPPORT EMERGENCY RULE MAKING**

The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing

the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council adopted the 2006 edition of the International Residential Code (IRC) effective July 1, 2007. The IRC regulates the construction of one and two family residences and townhouses. The 2006 IRC contains provisions related to fire separation distance found in the new section R302 and Table R302.1, that cause a high degree of uncertainty in the building industry. The immediate impact would affect potentially as many as 40,000 building lots in high growth counties in the state.

The council appointed a technical advisory group to examine a number of uncertainties related to the new provisions including: the distance for exterior wall separation to the lot line; the method of protecting the building eaves; the separation distance of the eave projection; how to measure the fire separation distance including the definition of building line, lot line, and fire separation distance; whether or not the building face includes the finish materials; and how to provide venting in the eave to prevent trapping moisture in the attic. The benefits of increased fire safety with the new provisions were inconclusive given the lack of clarity and the typical zoning provisions in place regulating building separation distance. The technical advisory group concluded that the new provisions would lead to inconsistent interpretations and severe market disruption.

The council concluded that it is in the best interest of the general welfare of the state of Washington to retain the provisions related to fire separation distance in section R302 of the 2003 edition of the IRC.

The council has adopted this language as a permanent rule for this section, but the permanent rule will not become effective until April 1, 2008.

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 1, 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: November 9, 2007.

John P. Neff  
Council Chair

## NEW SECTION

### **WAC 51-51-0302 Section R302—Location on lot.**

**R302.1 Exterior Walls.** Exterior walls with a fire separation distance less than 3 feet (914 mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet (610 mm) from the line used to determine the fire separation distance.

EXCEPTION: Detached garages accessory to a dwelling located within 2 feet of a lot line may have roof eave projections not exceeding 4 inches.

Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

EXCEPTION: Tool and storage sheds, playhouses and similar structures exempted from permits by R105.2 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.

**R302.2 Openings.** Openings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance less than 3 feet (914 mm). This distance shall be measured perpendicular to the line used to determine the fire separation distance.

EXCEPTION: 1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.  
2. Foundation vents installed in compliance with this code are permitted.

**R302.3 Penetrations.** Penetrations located in the exterior wall of a dwelling with a fire separation distance of less than 3 feet (914 mm) shall be protected in accordance with Section R317.3.

EXCEPTION: Penetrations shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.

## **WSR 08-01-068**

### **EMERGENCY RULES**

### **DEPARTMENT OF**

### **FISH AND WILDLIFE**

[Order 07-295—Filed December 14, 2007, 2:53 p.m., effective December 15, 2007]

Effective Date of Rule: December 15, 2007.

Purpose: Amend commercial fishing rules.

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

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 amounts of red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. Prohibition of all diving from licensed sea urchin harvest vessels prior to scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. 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: December 14, 2007.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-52-07300P Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective December 15, 2007 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1 and 2 are open only on December 20 and 21, 2007. Sea Urchin Districts 3, 4, 6 and 7 are open only on December 16, 17, 18, 19 and 20, 2007. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on December 16, 17, 18, 19, 20 and 21, 2007. Sea Urchin District 4 is open only on December 16, 17, 18, 19 and 20, 2007. In Sea Urchin Districts 1 and 2 it is unlawful to harvest red sea urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of spines). In Sea Urchin District 4 it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

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

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

(5) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel on December 15, 22, 23, 24 and 25, 2007, except by written permission from the Director.

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective December 15, 2007:

WAC 220-52-07300N Sea urchins. 07-249

**WSR 08-01-071  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-296—Filed December 14, 2007, 4:04 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Repealing 220-56-27000A; and amending WAC 220-56-270.

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: A Level 1 fishery was adopted in accordance with the Joint States Eulachon Management Plan. Abundance and productivity indicators project a weak return of smelt for 2008. Rule is consistent with the Washington department of fish and wildlife hearing action of December 13, 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 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 14, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

#### NEW SECTION

##### **WAC 220-56-27000A Smelt—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240, WAC 220-56-275, effective January 1, 2008 through March 31, 2008, it is unlawful to fish for or possess smelt in those waters of the Columbia River and tributaries except under the following provisions:

1) Area: Mainstem Columbia River below Bonneville Dam

Open Dates: 7 days/week

Hours: 24 hours per day

Daily limit: 25 pounds, possession limit 25 pounds

Gear: Dipnets

2) Area: Cowlitz River

Open Dates: Saturdays

Hours: 6:00 a.m. to 10:00 p.m. daily

Daily limit: 10 pounds, possession limit 10 pounds

Gear: Dipnets

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 1, 2008:

WAC 220-56-27000A Smelt—Areas and seasons.

**WSR 08-01-072**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-297—Filed December 14, 2007, 4:07 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order:  
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: Sets the annual season for recreational white sturgeon fisheries above Wauna power lines in the mainstem Columbia River and specific tributaries. Retention below the Wauna power lines is allowed under permanent regulations beginning January 1, 2008. 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 0, Amended 1, Repealed 0.

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

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

Date Adopted: December 14, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 232-28-61900R Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 232-28-619, effective January 1, 2008 until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from the Wauna powerlines upstream to Bonneville Dam, and all adjacent Washington tributaries, except a person may fish for and retain white sturgeon Thursdays, Fridays, Saturdays and Sundays.

**WSR 08-01-073**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-294—Filed December 14, 2007, 4:16 p.m., effective December 21, 2007, 12:01 p.m.]

Effective Date of Rule: December 21, 2007, 12:01 p.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to 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: December 14, 2007.

Loreva M. Preuss  
For Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-56-36000F Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. December 21 through 11:59 p.m. December 23, 2007, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. December 21 through 11:59 p.m. December 22, 2007, razor clam digging is allowed in Razor Clam Area 1 and that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 24, 2007:

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

**WSR 08-01-120  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-300—Filed December 18, 2007, 3:36 p.m., effective January 1, 2008, 12:01 a.m.]

Effective Date of Rule: January 1, 2008, 12:01 a.m.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000U; and amending WAC 220-44-050.

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: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottom fish, while reserving brood stock for future fisheries. 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: December 18, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-44-05000V Coastal bottomfish catch limits.** Notwithstanding the provisions of WAC 220-44-050, effective January 1, 2008 until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottomfish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 72, Number 242 published on December 18, 2007. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and

Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl, and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for the National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2008:

WAC 220-44-05000U Coastal bottomfish catch limits. (07-288)