

WSR 08-07-044
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)
(Division of Child Support)

[Filed March 14, 2008, 8:45 a.m., effective March 16, 2008]

Effective Date of Rule: March 16, 2008.

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). The division of child support (DCS) is developing new and amended rules as required in order to allow the Washington child support program to comply with the DRA under our state plan under Title IV-D of the federal Social Security Act. DCS 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 then filed second emergency rules under WSR 07-23-058, effective November 16, 2007.

DCS has developed policies and procedures and revised the proposed rules as needed. The draft rules have gone out for review, and DCS has worked extensively with interested stakeholders. DCS plans to file the CR-102, notice of proposed rule making, at the same time this third emergency rule is filed. These emergency rules are necessary until the regular rule-making process is completed. The third emergency filing contains exactly the same text as the first emergency rule and the second emergency rule.

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-eustodial)) 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 ((noneustodial)) 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 ((noneustodial)) obligated parent is not yet eligible for coverage?, 388-14A-4145 What must the plan administrator do when the insurance plan in which the ((noneustodial)) 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 ((noneustodial)) obligated parent has more than one family?, 388-14A-4160 Are there any limits on the amount ((a noneustodial)) 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?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-1025 What are the responsibilities of the division of child support?, 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?, 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue, 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity, 388-14A-3200 How does DCS determine

my support obligation?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3315 When DCS serves a notice of support debt or notice of support owed or notice of support owed for unreimbursed medical expenses, we notify the ((custodial parent and/or the payee under the) other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do?, 388-14A-4120 DCS uses the national medical support notice to enforce an obligation to provide health insurance coverage, 388-14A-4122 What kind of information is included in the national medical support notice?, 388-14A-4124 Who are the parties involved with the national medical support notice?, 388-14A-4125 What must an employer do after receiving a national medical support notice?, 388-14A-4130 What must a plan administrator do after receiving a national medical support notice from the division of child support?, 388-14A-4135 What must the plan administrator do when the ((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 DHS ((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 as of July 22, 2007, or risk loss of federal funds for noncompliance. DCS continues the regular rule-making process but because of extensive stakeholder participation, was unable to finalize the adoption of the rules within the time limit of the second 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: March 4, 2008.

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, prostheses, 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;

((d)) (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

((e)) (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 nonassistance 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)

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 NFPR, if necessary for an accurate support order.

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

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

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

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

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

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

((11))) (12) The NCP must make all support payments to the Washington state support registry after service of the NFPR. DCS does not give the NCP credit for payments made

to any other party after service of the NFPR, except as provided by 388-14A-3375.

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

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

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

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

- (a) Excluded from being the father by genetic tests; or
- (b) Found not to be the father by a court of competent jurisdiction.

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

- (a) A hearing on the NFPR.
- (b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

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

- (a) A hearing on the NFPR; or
- (b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

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

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

Reviser's note: The typographical 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.

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," ((or)) "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 ((nonecustodial)) obligated parent has health insurance but the children are not included in the coverage? (1) If the ((nonecustodial)) 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 ((nonecustodial)) obligated parent is eligible for health insurance but is not yet enrolled? (1) If the ((nonecustodial)) 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 ((nonecustodial)) obligated parent is not yet eligible for

coverage? If the ((~~nonecustodial~~) 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 ((~~nonecustodial~~) 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 ((~~nonecustodial~~) 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 ((~~nonecustodial~~) obligated parent has more than one family? (1) When ((a ~~nonecustodial~~ 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 ~~nonecustodial~~)) 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 ~~nonecustodial 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);

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

~~((j)) (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 08-08-039

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 26, 2008, 10:03 a.m., effective March 26, 2008, 10:03 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is creating WAC 388-828-9000, 388-828-9020, 388-828-9040, 388-828-9060, 388-828-9080, 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 and amending WAC 388-828-5360.

Citation of Existing Rules Affected by this Order: Amending WAC 388-838-5360.

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 07-14-081. Stakeholder work is being completed and the rules are expected to be formally proposed in April 2008. This emergency rule replaces the emergency rule filed November 28, 2008 [2007] as WSR 07-24-029.

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: March 20, 2008.

Stephanie E. Schiller
Rules Coordinator

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.

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

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	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
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

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:
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
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

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	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
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

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	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
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

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	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
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.

and family services rating is determined by using the following table:

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

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:

(1)

If your individual and family services level is 1, 2, 3, 4, or 5 and you are not eligible for 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

(2)

If your individual and family services level is 1, 2, 3, 4, or 5 and you are eligible for 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 eligible for 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 eligible for 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.

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

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	1 (Not at risk)
(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.	
(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; ((and)) or	2 (Some risk)
(4) "Lives with client" has been selected for all of the persons you have identified as your backup caregivers.	

If the availability of your backup caregiver is:	Then your risk level score is:
(5) You have no other caregiver available evidenced by a score of 9 for question 1 of the backup caregiver subscale.	3 (High risk)

WSR 08-09-001**EMERGENCY RULES****BUILDING CODE COUNCIL**

[Filed April 2, 2008, 2:56 p.m., effective April 2, 2008, 2:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend WAC 51-54-0400, 2006 International Fire Code for consistency with chapter 406, Laws of 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54-0400.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 RCW, chapter 406, Laws of 2007.

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

Reasons for this Finding: The state building code 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 state legislature passed the Safe Schools Plan, SSHB [2SSB] 5097, in the 2007 legislative session, which requires that school districts have an updated plan in place by September 1, 2008, to include drills for sheltering-in-place and lockdown in addition to fire drills.

The council, in conjunction with their fire code technical advisory group, the office of the superintendent of public instruction, Washington school safety advisory committee, and the Washington association of fire marshals, has developed amendments to chapter 51-54 WAC, the 2006 International Fire Code, outlining basic requirements for lockdown and shelter-in-place plans. The emergency rule allows school districts the maximum possible lead time to develop their plans under these guidelines. These plans are essential to ensure the safety of the occupants of schools in the state of Washington.

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 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 0, Amended 1, Repealed 0.

Date Adopted: March 14, 2008.

John P. Neff
Council Chair**AMENDATORY SECTION** (Amending WSR 07-01-093, filed 12/19/06, effective 7/1/07)**WAC 51-54-0400 Chapter 4—Emergency planning and preparedness.****401.2 Approval.** Where required by the fire code official, fire safety plans, emergency procedures, and employee training programs shall be approved.**SECTION 402 DEFINITIONS****EMERGENCY DRILL.** An exercise performed to train staff and occupants and to evaluate their efficiency and effectiveness in carrying out emergency procedures.**LOCKDOWN.** An action used to position occupants behind secured openings and isolated from threats.**Full lockdown.** Occupants remain out of sight and as quiet as possible, with only limited authorized entry, exit, or movement within the building. Occupants in corridors, common areas, or unsecured areas move quickly to the nearest secured area.**Modified lockdown.** Occupants of a facility are isolated from potential outside threats by remaining within a building with exterior doors and other exits secured, and that entry and exit from the building is limited to that which is authorized. During a modified lockdown, interior movement and other activities within the building may be allowed or restricted in accordance to the lockdown plan.**SHELTER-IN-PLACE.** An emergency response used to minimize exposure of facility occupants to chemical or environmental hazards by taking refuge in predetermined interior rooms or areas where actions are taken to isolate the interior environment from the exterior hazard.**SECTION 404 EMERGENCY PLANS****404.1 General.** Fire safety, evacuation, shelter-in-place, and lockdown plans shall comply with the requirements of this section.

404.2 Fire safety and evacuation plans. Fire safety and evacuation plans shall comply with the requirements of Sections 404.2.1 through 404.2.4.

404.2.1 Where required. A fire safety and evacuation plan shall be prepared and maintained in accordance with this chapter for the following occupancies and buildings when required by the fire code official.

1. Group A having an occupant load of 100 or more.
2. Group B buildings having an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.
3. Group E.
4. Group H.
5. Group I.
6. Group R-1.
7. Group R-2 college and university buildings. Boarding homes, group homes, and residential treatment facilities licensed by the state of Washington.
8. High-rise buildings.
9. Group M buildings having an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.
10. Covered malls exceeding 50,000 sf in aggregate floor area.
11. Underground buildings.
12. Buildings with an atrium and having an occupancy in Group A, E, or M.

((**404.4 Maintenance.** Fire safety and evacuation plans shall be reviewed by the owner or occupant annually or as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.))

404.2.2 Contents. Fire safety and evacuation plan contents shall be in accordance with Sections 404.2.2.1 and 404.2.2.2.

404.2.2.1 Fire evacuation plans. Fire evacuation plans shall include the following:

1. Emergency egress or escape routes and whether evacuation of the building is to be complete or, where approved, by selected floors or areas only.
2. Procedures for employees who must remain to operate critical equipment before evacuating.
3. Procedures for accounting for employees and occupants after evacuation has been completed.
4. Identification and assignment of personnel responsible for rescue or emergency medical aid.
5. The preferred and any alternative means of notifying occupants of a fire or emergency.
6. The preferred and any alternative means of reporting fires and other emergencies to the fire department or designated emergency response organization.
7. Identification and assignment of personnel who can be contacted for further information or explanation of duties under the plan.
8. A description of the emergency voice/alarm communication system alert tone and preprogrammed voice messages, where provided.

404.2.2.2 Fire safety plans. Fire safety plans shall include the following:

1. The procedure for reporting a fire or other emergency.
2. The life safety strategy and procedures for notifying, relocating, or evacuating occupants.

3. Site plans indicating the following:
 - 3.1 The occupancy assembly point.
 - 3.2 The locations of fire hydrants.
 - 3.3 The normal routes of fire department vehicle access.
4. Floor plans identifying the locations of the following:
 - 4.1 Exits.
 - 4.2 Primary evacuation routes.
 - 4.3 Secondary evacuation routes.
 - 4.4 Accessible egress routes.
 - 4.5 Areas of refuge.
 - 4.6 Manual fire alarm boxes.
 - 4.7 Portable fire extinguishers.
 - 4.8 Occupant-use hose stations.
 - 4.9 Fire alarm annunciators and controls.
5. A list of major fire hazards associated with the normal use and occupancy of the premises, including maintenance and housekeeping procedures.
6. Identification and assignment of personnel responsible for maintenance of systems and equipment installed to prevent or control fires.
7. Identification and assignment of personnel responsible for maintenance, housekeeping and controlling fuel hazard sources.

404.2.3 Maintenance. Fire safety and evacuation plans shall be reviewed by the owner or occupant annually or more often, as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.

404.2.4 Availability. Fire safety and evacuation plans shall be available in the workplace for reference and review by employees, and copies shall be furnished to the fire code official for review upon request.

404.3 Shelter-in-place and lockdown plans. Shelter-in-place and lockdown plans shall comply with the requirements of Sections 404.3.1 through 404.3.4.

404.3.1 Where required. A shelter-in-place and lockdown plan shall be prepared and maintained for all Group E occupancies.

EXCEPTION: Daycares not colocated on a Group E campus.

404.3.2 Contents. Shelter-in-place and lockdown plan contents shall be in accordance with Sections 404.3.2.1 and 404.3.2.2.

404.3.2.1 Shelter-in-place plans. Shelter-in-place plans shall include the following:

1. Identification of the procedures of initiating the shelter-in-place plan throughout the facility or campus.
2. Identification of prearranged alert and recall signals to notify all occupants.
3. Identification of procedures for reporting the facility is sheltering-in-place to the local emergency dispatch center.
4. A means of two-way communication between a central location and each secure area.
5. Identification of protective security measures.
6. Location of emergency supplies.

7. Accountability procedures for staff to report the presence or absence of occupants.

8. Identification of crisis response team members in accordance with the National Incident Management System.

9. Actions to be taken in the event of a fire or medical emergency while sheltering-in-place.

404.3.2.2 Lockdown plans. Lockdown plans shall include the following:

1. Identification of the procedures of initiating the lockdown plan throughout the facility or campus.

2. Identification of prearranged alert and recall signals to notify all occupants.

3. Identification of procedure for access to facility for emergency responders.

4. Identification of procedures for reporting the facility is in lockdown to the local emergency dispatch center.

5. A means of two-way communication between a central location and each secure area.

6. Identification of protective security measures.

7. Location of emergency supplies.

8. Accountability procedures for staff to report the presence or absence of occupants.

9. Identification of crisis response team members in accordance with the National Incident Management System.

10. Actions to be taken in the event of a fire or medical emergency while in lockdown.

404.3.3 Maintenance. Shelter-in-place and lockdown plans shall be reviewed by the owner or occupant annually or more often, as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.

404.3.4 Availability. Shelter-in-place and lockdown plans shall be available in the workplace for reference and review by employees, and copies shall be furnished to the fire code official for review upon request.

Sections 404.4 and 404.5 are not adopted.

SECTION 405 EMERGENCY DRILLS

405.1 General. Emergency drills shall comply with the requirements of this section.

405.2 Emergency evacuation drills. Emergency evacuation drills complying with the provisions of this section shall be conducted at least annually in the occupancies listed in Section 404.2.1 or when required by the fire code official. Drills shall be designed in cooperation with the local authorities.

405.2.1 Frequency. Required emergency evacuation drills shall be held at the intervals specified in Table 405.2.1 or more frequently where necessary to familiarize all occupants with the drill procedure.

TABLE 405.2.1
FIRE AND EVACUATION DRILL
FREQUENCY AND PARTICIPATION

<u>GROUP OR OCCUPANCY</u>	<u>FREQUENCY</u>	<u>PARTICIPATION</u>
Group A	Quarterly	Employees
Group B ^c	Annually	Employees

TABLE 405.2.1
FIRE AND EVACUATION DRILL
FREQUENCY AND PARTICIPATION

<u>GROUP OR OCCUPANCY</u>	<u>FREQUENCY</u>	<u>PARTICIPATION</u>
Group E	Monthly ^{a,e}	All occupants
Group I	Quarterly on each shift	Employees ^b
Group R-1	Quarterly on each shift	Employees
Group R-2 ^f	Quarterly on each shift	Employees
Group R-2 ^d	Four annually	All occupants
High-rise buildings	Annually	Employees

^a The frequency shall be allowed to be modified in accordance with Section 408.3.2.

^b Fire and evacuation drills in residential care assisted living facilities shall include complete evacuation of the premises in accordance with Section 408.10.5. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.

^c Group B buildings having an occupant load of five hundred or more persons or more than one hundred persons above or below the lowest level of exit discharge.

^d Applicable to Group R-2 college and university buildings in accordance with Section 408.3.

^e Group E, and daycares colocated on a Group E campus shall jointly perform at least six fire and evacuation drills per school year.

^f Applicable to boarding homes, group homes, and residential treatment facilities licensed by the state of Washington.

405.2.2 Leadership. Responsibility for the planning and conduct of drills shall be assigned to competent persons designated to exercise leadership.

405.2.3 Time. Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in case of fire.

405.2.4 Recordkeeping. Records shall be maintained of required emergency evacuation drills and include the following information:

1. Identity of the person conducting the drill.
2. Date and time of the drill.
3. Notification method used.
4. Staff members on duty and participating.
5. Number of occupants evacuated.
6. Special conditions simulated.
7. Problems encountered and corrective action taken.
8. Weather conditions when occupants were evacuated.
9. Time required to accomplish complete evacuation.

405.2.5 Notification. Where required by the fire code official, prior notification of emergency evacuation drills shall be given to the fire code official.

405.2.6 Initiation. Where a fire alarm system is provided, emergency evacuation drills shall be initiated by activating the fire alarm system. The fire alarm monitoring company shall be notified prior to the activation of the fire alarm system for drill purposes and again at the conclusion of the trans-

mission and restoration of the fire alarm system to normal mode.

EXCEPTION: Drills conducted between the hours of 9:00 p.m. and 6:00 a.m., in Group R-2 boarding homes, group homes and residential treatment facilities licensed by the state of Washington, are allowed to utilize a coded announcement.

405.2.7 Accountability. As building occupants arrive at the assembly point, efforts shall be made to determine if all occupants have been successfully evacuated or have been accounted for.

405.2.8 Recall and reentry. An electrically or mechanically operated signal used to recall occupants after an evacuation shall be separate and distinct from the signal used to initiate the evacuation. The recall signal initiation means shall be manually operated and under the control of the person in charge of the premises or the official in charge of the incident. No one shall reenter the premises until authorized to do so by the official in charge.

405.3 Shelter-in-place and lockdown drills. Shelter-in-place and lockdown drills complying with the provisions of this section shall be conducted in the occupancies listed in Section 404.3.1 or when required by the fire code official. Drills shall be designed in cooperation with local authorities.

405.3.1 Frequency. Shelter-in-place and lockdown drills required by this section shall each be held at least annually to familiarize all occupants with the emergency procedures. Group E and colocated daycares shall drill jointly.

405.3.2 Leadership. Responsibility for the planning and conduct of drills shall be assigned to competent persons designated to exercise leadership.

405.3.3 Time. Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in case of an emergency.

405.3.4 Recordkeeping. Records shall be maintained of required shelter-in-place and lockdown drills and include the following information:

1. Identity of the person conducting the drill.
2. Date and time of the drill.
3. Notification method used.
4. Staff members on duty and participating.
5. Number of occupants sheltered and unaccounted for.
6. Special conditions simulated.
7. Problems encountered and corrective actions taken.
8. Time required to accomplish complete sheltering.

405.3.5 Notification. Where required by the fire code official, prior notification of shelter-in-place and lockdown drills shall be given to appropriate emergency response agencies.

405.3.6 Signals. Alerting signals shall be separate and distinct from the fire alarm and other signals.

405.3.7 Accountability. Efforts shall be made to determine if all occupants have been successfully sheltered and accounted for.

SECTION 406 EMPLOYEE TRAINING AND RESPONSE PROCEDURES

406.1 General. Employees in the occupancies listed in Sections 404.2.1 and 404.3.1 shall be trained in the procedures described in their emergency plans. Training shall be based on these plans and as described in Sections 404.2.2 and 404.3.2.

406.3 Employee training program. Employees shall be trained in fire prevention, evacuation, fire safety, shelter-in-place, and lockdown in accordance with Sections 406.3.1 through 406.3.4.

406.3.4 Shelter-in-place and lockdown training. Employees shall be familiarized with the alert and recall signals, their assigned duties in the event of an alarm or emergency, communication system, location of emergency supplies, and the use of the incident notification and alert system.

SECTION 408 USE AND OCCUPANCY-RELATED REQUIREMENTS

408.2.1 Seating plan. The fire safety and evacuation plans for assembly occupancies shall include the information required by Section 404.2.2 and a detailed seating plan, occupant load, and occupant load limit. Deviations from the approved plans shall be allowed provided the occupant load limit for the occupancy is not exceeded and the aisles and exit accessways remain unobstructed.

408.3.2 Emergency evacuation drill deferral. In severe climates, the fire code official shall have the authority to modify the emergency evacuation drill frequency specified in Section 405.2.1.

408.5.4 Drill frequency. Emergency evacuation drills shall be conducted at least six times per year, two times per year on each shift. Twelve drills shall be conducted in the first year of operation. Drills are not required to comply with the time requirements of Section 405.2.3.

408.6 Group I-2 occupancies. Group I-2 occupancies shall comply with the requirements of Sections 408.6.1 and 408.6.2 and Sections 401 through 406. Drills are not required to comply with the time requirements of Section 405.2.3.

Section 408.10 is not adopted.

408.11.1 Lease plan. A lease plan shall be prepared for each covered mall building. The plan shall include the following information in addition to that required by Section 404.2.2.2:

1. Each occupancy, including identification of tenant.
2. Exits from each tenant space.
3. Fire protection features, including the following:
 - 3.1 Fire department connections.
 - 3.2 Fire command center.
 - 3.3 Smoke management system controls.
 - 3.4 Elevators and elevator controls.
 - 3.5 Hose valves outlets.
 - 3.6 Sprinkler and standpipe control valves.
 - 3.7 Automatic fire-extinguishing system areas.
 - 3.8 Automatic fire detector zones.
 - 3.9 Fire barriers.

408.11.1.1 Submittal. The lease plan shall be submitted to the fire code official, and shall be maintained on-site for immediate reference by responding fire service personnel.

408.11.1.2 Revisions. The lease plan shall be reviewed and revised annually or as often as necessary to keep them current. Modifications or changes in occupancies shall not be made without prior approval of the fire code official and building official.

**WSR 08-09-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-57—Filed April 3, 2008, 2:47 p.m., effective April 6, 2008, 12:01 a.m.]

Effective Date of Rule: April 6, 2008, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-36000J; 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 and 2 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: April 3, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-36000J Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it

is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 a.m. April 6 through 11:59 a.m. April 8, 2008, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. April 6 through 11:59 a.m. April 9, 2008, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.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 p.m. April 9, 2008:

WAC 220-56-36000J	Razor clams—Areas and seasons.
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**WSR 08-09-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-60—Filed April 3, 2008, 2:49 p.m., effective April 3, 2008, 2:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and North Puget Sound require adoption of harvest seasons and the prohibition on nighttime fishing contained in this emergency rule. 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: April 3, 2008.

J. P. Koenings
Director

NEW SECTION

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

(1) Shrimp beam trawl gear:

a. Shrimp Management Area 3 (outside of the Discovery Bay shrimp district, Sequim Bay and Catch Area 23D) will open at 6:00 a.m. on April 16, 2008, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

b. That portion of Catch Area 22A within Shrimp Management Area 1B will open at 6:00 a.m. May 16, 2008, until further notice.

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

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

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

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

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

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

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

Date Adopted: April 4, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in District 5 on Sunday through Friday of each week.

(2) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100P Sea cucumbers. (08-51)

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

WAC 220-52-07100Q Sea cucumbers.

WSR 08-09-016

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-59—Filed April 4, 2008, 3:06 p.m., effective April 18, 2008, 12:01 a.m.]

Effective Date of Rule: April 18, 2008, 12:01 a.m.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Prohibition of all diving from licensed sea cucumber harvest vessels within one day of scheduled 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

Statutory Authority for Adoption: RCW 77.12.047.

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

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

Reasons for this Finding: This closure of Long's Pond is necessary to allow staff to set nets and stock fish for the April 19, 2008, fishing activities and ensure a successful family fish-in event. 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: April 4, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—Long's Pond (Thurston Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 18 through 8:00 a.m. April 19, 2008, it is unlawful to fish in those waters of Long's Pond.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:01 a.m. April 19, 2008:

WAC 232-28-61900N	Exceptions to statewide rules—Long's Pond (Thurston Co.)
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WSR 08-09-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-62—Filed April 7, 2008, 1:25 p.m., effective April 7, 2008, 1:25 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule conforms to federal action taken by the Pacific Fisheries Management Council. There is sufficient recreational quota to provide for these seasons. 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: April 7, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-25500B Halibut—Seasons—Daily and possession limits. (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(a) Catch Record Card Area 2 - Open May 1 until further notice, except after May 1 closed to fishing 12:01 a.m. through 11:59 p.m. each Monday and 12:01 a.m. each Wednesday through 11:59 p.m. each Saturday.

(b) Catch Record Card Areas 3 and 4 - Open May 13, 2008, until further notice, except closed to fishing for halibut 12:01 a.m. each Sunday through 11:59 p.m. each Monday; 12:01 a.m. through 11:59 p.m. each Wednesday; and 12:01 a.m. through 11:59 p.m. each Friday. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to
48°18'N., 124°59'W.; thence to
48°11'N., 124°59'W.; thence to
48°11'N., 125°11'W., thence to
48°04'N., 125°11'W.; thence to
48°04'N., 124°59'W.; thence to
48°N., 124°59'W.; thence to
48°N., 125°18'W.; thence to point of origin.

(c) Catch Record Card Areas 6 through 11 and Catch Record Area 13 - Open April 10 through June 13, 2008, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(d) Catch Record Card Area 5 - Open May 22 through July 21, 2008, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

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

WSR 08-09-019

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 08-61—Filed April 7, 2008, 1:30 p.m., effective April 7, 2008, 1:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This regulation is necessary to assure a safe and successful fishing kids event. Trout will be stocked two days prior to the event to acclimate them. Closing the pond prior to the event will ensure there are fish for participants to catch. On the date of the event preregistered kids will be allowed to fish in these netted areas. 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; **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 7, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—

Klineline Pond (Clark Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 10, 2008 through 6:00 p.m. April 12, 2008, it is unlawful to fish in those waters of Klineline Pond, except as provided in this section:

(a) Open to fishing 9:00 a.m. to 3:00 p.m. April 11, 2008 for special participants in the Fishing Kids event.

(b) Open to fishing 8:00 a.m. to 3:00 p.m. April 12, 2008 in the netted area to juvenile anglers participating in the Fishing Kids event.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900H

Exceptions to statewide rules—Klineline Pond (Clark Co.)

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. April 12, 2008:

WAC 232-28-61900P

Exceptions to statewide rules—Klineline Pond (Clark Co.)

WSR 08-09-020

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 08-64—Filed April 7, 2008, 4:17 p.m., effective April 7, 2008, 4:17 p.m.]

Effective Date of Rule: Immediately.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the second fishing period for the 2008 winter commercial salmon season. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. Season is consistent with Washington fish and wildlife commission guidance for 2006-2008 sturgeon fishery management. This rule is consistent with actions of the Columbia River compact hearings of February 15 and April 7, 2008. This rule conforms Washington and Oregon state rules. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: April 7, 2008.

J. P. Koenings
Director

NEW SECTION

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

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

1. Area: SMCRA 1C, and 1E only in the area from the west powerlines on Hayden Island upstream to Beacon Rock (Zone 5 upper boundary).

a) Season: 7:00 a.m. to 11:00 p.m. Tuesday April 8, 2008 (16 hours).

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

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

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

minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 175 fathoms. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks under miscellaneous regulations.

i. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), it shall be lawful to have onboard a commercial fishing vessel more than one licensed net in excess of the lawful size or length prescribed for a single net as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length.

ii. Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

d) Sanctuaries: Washougal and Sandy rivers

e) Miscellaneous Regulations:

i. At least one fisher on each boat must have tangle net certification.

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

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

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

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

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

vi. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

vii. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

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

x. Columbia River tangle net certification: This is any individual meeting the qualifications of RCW 77.65.040(2) and who obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

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

2. Blind Slough Select Area

a) Area: Blind Slough and Knappa Slough areas. From May 1 through June 13, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundary). Concurrent Washington/Oregon waters extend downstream of the railroad bridge.

b) Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 17 through June 13, 2008

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

d) Allowable sales: salmon, white sturgeon, and shad.

3. Deep River Select Area

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

b) Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 17 through June 13, 2008.

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

d) Allowable sales: salmon, white sturgeon, and shad.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000D Columbia River seasons below Bonneville. (08-58)

The following section of the Washington Administrative Code is repealed effective June 14, 2008:

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

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.320.

Other Authority: The Consolidated Appropriations Act of 2008, signed into law on December 26, 2007, and the National Defense Bill, which was signed by the President on January 28, 2008.

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 amendments need to be made via an emergency rule filing since eligibility for special immigrants from Iraq and Afghanistan begin the date they enter the United States. Some individuals would receive limited assistance or no assistance at all if the department made the changes only via the regular rule filing process. The department is concurrently working on the regular rule filing process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: April 9, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

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

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien";
- (e) A victim of trafficking; ((or))
- (f) A Hmong or Highland Lao; or
- (g) An Iraqi or Afghan Special Immigrant who was granted Special Immigrant status under section 101(a)(27) of the Immigration and Nationality Act (INA). Iraqi Special

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0010, 388-424-0020, 388-466-0005, 388-466-0120, and 388-466-0130.

Immigrants are eligible for eight months of federally-funded assistance from the date of entry into the United States.
Afghan Special Immigrants are eligible for six months of federally-funded assistance from the date of entry into the United States.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, nonemergency Medicaid, and SCHIP benefits.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, non-emergency Medicaid, or SCHIP for five years after obtaining status as a qualified alien unless he or she is an alien as described under WAC 388-424-0006(4).

(4) An alien who is ineligible for TANF, nonemergency Medicaid, or SCHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien emergency medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (SFA, GA and ADATSA) and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits as described in WAC 388-462-0015; or

(d) Children's health program as described in WAC 388-505-0210.

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

WAC 388-424-0020 How does my alien status impact my eligibility for the federally funded Washington Basic Food program benefits? (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a), ((or)) (b), (c) or (d) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of "qualified aliens" or similarly defined lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;
- (iv) Deportation or removal withheld;
- (v) Refugee;
- (vi) Victim of trafficking;
- (vii) Noncitizen American Indian; or
- (viii) Hmong or Highland Lao tribal member.

(b)(i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

- (A) Conditional entrant;
- (B) Lawful permanent resident (LPR);
- (C) Paroled for one year or more; or
- (D) Victim of domestic violence or parent or child of a victim.

(ii) And, one of the following also applies to you:

(A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007(1);

(C) You receive cash or medical benefits based on Supplemental Security Income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age eighteen; or

(F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

(c) You are an Iraqi Special Immigrant who was granted Special Immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA). Iraqi Special Immigrants are eligible for eight months of federally-funded assistance from the date of entry into the United States.

(d) You are an Afghan Special Immigrant who was granted Special Immigrant status under section 101 (a)(27) of the INA. Afghan Special Immigrants are eligible for six months of federally-funded assistance from the date of entry into the United States.

(3) If you are ineligible for federal Basic Food benefits due to your alien status, you may be eligible for state Basic Food benefits (see WAC 388-424-0025).

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

WAC 388-466-0005 Immigration status requirement for refugee assistance. (1) To be eligible for refugee cash assistance (RCA) and refugee medical assistance (RMA), a person must prove, by providing documentation issued by the ((Immigration and Naturalization Service (INS)) U.S. Citizenship and Immigration Services (USCIS)), that he or she was:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the U.S. as a refugee or asylee under section 212 (d)(5) of the INA;

(c) Granted conditional entry under section 203 (a)(7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;

(g) From Iraq or Afghanistan and has been granted Special Immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA).

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was

previously in one of the statuses described in subsections (1)(a) through ((f)) (g) of this section.

AMENDATORY SECTION (Amending WSR 02-04-057, filed 1/30/02, effective 2/1/02)

WAC 388-466-0120 Refugee cash assistance (RCA).
(1) Who can apply for (~~refugee~~) refugee cash assistance (RCA)?

Any individual can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) How do I know if I qualify for RCA?

You may be eligible for RCA if you meet all of the following conditions:

- (a) You have resided in the United States for less than eight months;
- (b) You meet the immigration status requirements of WAC 388-466-0005;
- (c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;
- (d) You meet the work and training requirements of WAC 388-466-0150; and
- (e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) What are the other reasons for not being eligible for RCA?

Even if you meet the eligibility requirements named in subsection (2) above you may be not eligible if you:

- (a) Are eligible for temporary assistance for needy families (TANF) or Supplemental Security Income (SSI); or
- (b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or
- (c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or
- (d) Are a full-time student in a college or university.

(4) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) If I am a victim of human trafficking, can I be eligible for RCA?

(a) If you are an adult victim you are eligible for RCA to the same extent as a refugee, if you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS) and meet eligibility requirements in subsection (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter.

(b) If you are a child victim under eighteen years old you are eligible for benefits to the same extent as a refugees and do not need to be certified. DHHS issues a special letter for

children. Children also have to meet income eligibility requirement.

(6) Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) What is the effective date of my eligibility for RCA?

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) When does my RCA end?

(a) Your RCA ends on the last day of the eighth month starting from the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

(b) If you are from Afghanistan and were granted Special Immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), your RCA ends on the last day of the sixth month starting from the month of your arrival to the United States.

(c) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA. Your medical coverage may continue for up to eight months from your month of arrival in the United States (WAC 388-466-0130).

(9) Are there other reasons why RCA may end?

Your RCA also ends if:

- (a) You move out of Washington state;
- (b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or
- (c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs. Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States. If you live together you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on your and your spouse's combined income and resources (WAC 388-466-0140). Spouses from Afghanistan who have been granted Special Immigrant status under section 101 (a)(27) of the INA, are eligible for RCA for a maximum of six months from the date of entry into the United States.

(11) Can I get additional money in an emergency?

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) Can I receive RCA if I was granted Special Immigrant status?

(a) If you are from Iraq and were granted Special Immigrant status under section 101 (a)(27) of the INA, and you meet all other eligibility requirements, you are eligible for RCA for up to eight months from the date of your entry to the United States.

(b) If you are from Afghanistan and were granted Special Immigrant status under section 101 (a)(27) of the INA, and you meet all other eligibility requirements, you are eligible for RCA for up to six months from the date of your entry to the United States.

(13) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or a fair hearing (WAC 388-02-0090). Your request must be made within ninety days of the decision or action.

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.

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-466-0130 Refugee medical assistance (RMA). (1) Who can apply for refugee medical assistance?

Any individual can apply for refugee medical assistance (RMA) and have eligibility determined by the department of social and health services (DSHS).

(2) Who is eligible for refugee medical assistance?

(a) You are eligible for RMA if you meet all of the following conditions:

(i) Immigration status requirements of WAC 388-466-0005;

(ii) Income and resource requirements of WAC 388-466-0140;

(iii) Monthly income standards up to two hundred percent of the federal poverty level (FPL). Spenddown is available for applicants whose income exceeds two hundred percent of FPL (see WAC 388-519-0110); and

(iv) Provide the name of the voluntary agency (VOLAG) which helped bring you to this country, so that DSHS can promptly notify the agency (or sponsor) about your application for RMA.

(b) You are eligible for RMA if you meet one of the following conditions:

(i) Receive refugee cash assistance (RCA) and are not eligible for Medicaid or children's health insurance program (CHIP); or

(ii) Choose not to apply for or receive RCA and are not eligible for Medicaid or CHIP, but still meet RMA eligibility requirements.

(3) Who is not eligible for refugee medical assistance?

You are not eligible to receive RMA if you are:

(a) Already eligible for Medicaid or CHIP;

(b) A full-time student in an institution of higher education unless the educational activity is part of a department-approved individual responsibility plan (IRP);

(c) A nonrefugee spouse of a refugee.

(4) If I have already received a cash assistance grant from voluntary agency (VOLAG), will it affect my eligibility for RMA?

No. A cash assistance payment provided to you by your VOLAG is not counted in determining eligibility for RMA.

(5) If I get a job after I have applied but before I have been approved for RMA, will my new income be counted in determining my eligibility?

No. Your RMA eligibility is determined on the basis of your income and resources on the date of the application.

(6) Will my sponsor's income and resources be considered in determining my eligibility for RMA?

Your sponsor's income and resources are not considered in determining your eligibility for RMA unless your sponsor is a member of your assistance unit.

(7) How do I find out if I am eligible for RMA?

DSHS will send you a letter in both English and your primary language informing you about your eligibility. DSHS will also let you know in writing every time there are any changes or actions taken on your case.

(8) Will RMA cover my medical expenses that occurred after I arrived in the U.S. but before I applied for RMA?

You may be eligible for RMA coverage of your medical expenses for three months prior to the first day of the month of your application. Eligibility determination will be made according to Medicaid rules.

(9) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example, if you entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and granted asylum on September 1, 2000, your date of entry is September 1, 2000. On September 1, 2000 you may be eligible for refugee medical assistance.

(10) When does my RMA end?

Your refugee medical assistance will end on the last day of the eighth month from the month of your entry into the United States. Start counting the eight months from the first day of the month of your entry into the U.S. For example, if you entered the U.S. on May 28, 2000, your last month is December 2000.

(11) What happens if my earned income goes above the income standards?

(a) If you are getting RMA, your medical eligibility will not be affected by the amount of your earnings;

(b) If you were getting Medicaid and it was terminated because of your earnings, we will transfer you to RMA for the rest of your RMA eligibility period. You will not need to apply.

(12) Will my spouse also be eligible for RMA, if he/she arrives into the U.S. after me?

When your spouse arrives in the U.S., we will determine his/her eligibility for Medicaid and other medical programs. Your spouse may be eligible for RMA; if so, he/she would have a maximum of eight months of RMA starting on the first day of the month of his/her arrival. Spouses from Afghanistan who have been granted Special Immigrant status under

section 101 (a)(27) of the Immigration and Nationality Act (INA), are eligible for RMA for a maximum of six months from the date of entry into the United States.

(13) Can I receive RMA if I was granted Special Immigrant status?

(a) If you are from Iraq and were granted Special Immigrant status under section 101 (a)(27) of the INA, and you meet all other eligibility requirements, you are eligible for RMA for up to eight months from the date of your entry to the United States.

(b) If you were from Afghanistan and were granted Special Immigrant status under section 101 (a)(27) of the INA, and you meet all other eligibility requirements, you are eligible for RMA for up to six months from the date of your entry to the United States.

(14) What do I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with the decision or action taken on your case by department you have the right to request a review of your case or request a fair hearing (see WAC 388-02-0090). Your request must be made within ninety days of the decision or action).

((14))) (15) What happens to my medical coverage after my eligibility period is over?

We will determine your eligibility for other medical programs. You may have to complete an application for another program.

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 08-09-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-70—Filed April 14, 2008, 3:09 p.m., effective April 14, 2008, 3:09 p.m.]

Effective Date of Rule: Immediately.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife com-

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the third fishing period for the 2008 winter commercial salmon season. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. Season is consistent with Washington fish and wildlife commission guidance for 2006-2008 sturgeon fishery management. This rule is consistent with actions of the Columbia River compact hearings of February 15 and April 14, 2008. This rule conforms Washington and Oregon state rules. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: April 14, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

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

1. Area: SMCRA 1C, and 1E, only in the area from the west powerlines on Hayden Island upstream to Beacon Rock (Zone 5 upper boundary).

a) Season: 3:00 a.m. to 3:00 p.m. Tuesday April 15, 2008

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

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

Net length not to exceed 150 fathoms, except under the following conditions: An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel must be a minimum of 5 feet in depth and must not exceed 10 feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in

length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers, must extend a minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 175 fathoms. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks under miscellaneous regulations.

i. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), it shall be lawful to have onboard a commercial fishing vessel more than one licensed net in excess of the lawful size or length prescribed for a single net as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length.

ii. Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

d) Sanctuaries: Washougal and Sandy rivers

e) Miscellaneous Regulations:

i. At least one fisher on each boat must have tangle net certification.

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

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

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

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate

to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

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

vi. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

vii. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

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

x. Columbia River tangle net certification: This is any individual meeting the qualifications of RCW 77.65.040(2) and who obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

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

2. Blind Slough Select Area

a) Area: Blind Slough and Knappa Slough areas. From May 1 through June 13, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundary). Concurrent Washington/Oregon waters extend downstream of the railroad bridge.

b) Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 17 through June 13, 2008

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

d) Allowable sales: salmon, white sturgeon, and shad.

3. Deep River Select Area

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

b) Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 17 through June 13, 2008.

c) Gear: 8-inch maximum. Nets are restricted to a maximum length of 100 fathoms with no weight restriction on

leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sales: salmon, white sturgeon, and shad.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000E	Columbia River seasons below Bonneville. (08-64)
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The following section of the Washington Administrative Code is repealed effective June 14, 2008:

WAC 220-33-01000F	Columbia River seasons below Bonneville.
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WSR 08-09-055

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-69—Filed April 14, 2008, 3:15 p.m., effective April 16, 2008, 12:01 a.m.]

Effective Date of Rule: April 16, 2008, 12:01 a.m.

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: With a preseason forecast of 900, Chehalis River spring chinook are well below the goal of 1400. This emergency rule is necessary to correspond with the original intent of regulations developed through North of Falcon. This emergency rule is interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: April 14, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Chehalis River (Grays Harbor Co.) Notwithstanding the provisions of WAC 232-28-619, effective April 16, 2008 until further notice, it is unlawful to fish for or possess salmon in waters in the Chehalis River, from the mouth to Porter Bridge and from Porter Bridge to high bridge on Weyerhaeuser 1000 line.

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 08-09-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-68—Filed April 15, 2008, 1:08 p.m., effective April 19, 2008, 12:01 a.m.]

Effective Date of Rule: April 19, 2008, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000K; 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 3 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: April 15, 2008.

J. P. Koenings
Director

NEW SECTION

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

1. Effective 12:01 a.m. April 19 through 11:59 a.m. April 23, 2008, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. April 19 through 11:59 a.m. April 20, 2008, 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 a.m. to 11:59 a.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.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 23, 2008:

WAC 220-56-36000K	Razor clams—Areas and seasons.
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**WSR 08-09-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-66—Filed April 15, 2008, 1:10 p.m., effective April 26, 2008, 12:01 a.m.]

Effective Date of Rule: April 26, 2008, 12:01 a.m.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The opening of trout season on Swift Reservoir in Skamania County is being delayed for a month due to the abnormally slow melting of the heavy snow pack in the basin. Spring inflows have yet to occur, resulting in unusually low water levels on the uppermost Lewis River Reservoir. Current conditions make it really difficult to provide a quality fishing opportunity for the public. Access, whether from shore or a boat would be extremely limited and unsafe. 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: April 15, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Swift Reservoir. Notwithstanding the provisions of WAC 232-28-619, effective April 26 through May 23, 2008 it is unlawful to fish in those waters of Swift Reservoir.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 24, 2008:

WAC 232-28-61900Q Exceptions to statewide rules—Swift Reservoir.

WSR 08-09-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-65—Filed April 15, 2008, 1:20 p.m., effective May 12, 2008, 3:00 p.m.]

Effective Date of Rule: May 12, 2008, 3:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-03000D; and amending WAC 220-33-030.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Opens the Area 2S shad fishery. Harvestable numbers of shad are expected in 2008. Incidental impacts to nontarget species are small and are included in the biological opinion for the 2005-2007 management agreement. This rule is consistent with actions of the Columbia River compact hearing of February 15, 2008, and is consistent with requirements of the ESA. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in

treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: April 15, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-33-03000D Commercial shad—Columbia River. Notwithstanding the provisions of WAC 220-33-030, it is unlawful to take, fish for or possess shad taken for commercial purposes except as provided for in this section:

Area: **Area 2S.** True north/south line through Light #50 near the mouth of the Sandy River upstream to the commercial fishing boundary near Beacon Rock.

Dates: Daily, 3:00 p.m. to 10:00 p.m. from:

May 12 - May 16, 2008

May 19 - May 23, 2008

May 27 - May 30, 2008

June 2 - June 6, 2008

June 9 - June 13, 2008

June 16 - June 20, 2008

Gear: Single-wall, unslackened, floater gill net, with breaking strength of less than 10 pounds. Mesh size: 5 3/8 inches to 6 1/4 inches. The net may not exceed 150 fathoms in length nor 40 meshes in depth.

Allowable Sale: During the fishing periods provided in this section, only shad may be kept and sold. All salmonids, walleye and sturgeon must be immediately returned to the water and those alive must be released unharmed.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 10:01 p.m. June 20, 2008:

WAC 220-33-03000D Commercial shad—Columbia River.

WSR 08-09-065

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-71—Filed April 15, 2008, 4:30 p.m., effective May 1, 2008, 6:00 a.m.]

Effective Date of Rule: May 1, 2008, 6:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and North Puget Sound require adoption of harvest seasons and the prohibition on nighttime fishing contained in this emergency rule. This emergency rule opens the pot fishery season for nonspot shrimp. 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: April 15, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 are open to harvest of all shrimp species from 6:00 a.m. May 1, 2008, until further notice.

(b) All waters of Shrimp Management Areas 1B, 1C, and Crustacean Management Regions 2, 3, 4, and 6 outside the Discovery Bay Shrimp District are open to the harvest of all non-spot shrimp species from 6:00 a.m. May 1, 2008, until further notice, except as provided for in this section:

i) In Marine Fish/Shellfish Management and Catch Reporting Area 22A, closed through June 15 in waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island.

ii) All waters of Catch Areas 23A-E, 23A-W, and 23A-C are closed.

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

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

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

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

(2) Shrimp beam trawl gear:

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

b. That portion of Catch Area 22A east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait will open at 6:00 a.m. May 1, 2008, until further notice.

c. That portion of Catch Area 22A within Shrimp Management Area 1B will open at 6:00 a.m. May 16, 2008, until further notice.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. May 1, 2008:

WAC 220-52-05100U

Puget Sound shrimp beam trawl fishery—Season (08-60)

WSR 08-09-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-72—Filed April 16, 2008, 1:26 p.m., effective May 1, 2008, 12:01 a.m.]

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

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This emergency regulation is necessary to assure a successful "Fishing Kids" event. Several thousand fish will be stocked into Columbia Park Pond two days prior to the event to better acclimate them before the event. On the day of the event, preregistered kids will be allowed to fish during the event. 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 Mak-

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

Date Adopted: April 16, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Columbia Park Pond (Benton Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 1 through 4:00 p.m. May 3, 2008, it is unlawful to fish in those waters of Columbia Park Pond, except that juveniles participating in the Fishing Kids Event may fish from 8:00 a.m. to 4:00 p.m. on May 3, 2008.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. May 3, 2008:

WAC 232-28-61900V	Exceptions to statewide rules—Columbia Park Pond.
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**WSR 08-09-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-73—Filed April 16, 2008, 1:29 p.m., effective May 1, 2008, 12:01 a.m.]

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

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Washington department of fish and wildlife predicts that 1,100 hatchery (adipose fin-clipped) spring chinook will return to the Ringold Springs Rearing Facility (RSRF) in 2008. These salmon were reared with funding from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). All of the fish were adipose fin-clipped prior to release. This is the second consecutive year for the Ringold Area Bank Fishery for spring chinook. This fishery will be intensively monitored with the objective of providing a 50:50 allocation between angler harvest and trapped adults for the CTUIR's Walla Walla reintroduction program. The fishery may be closed with little advance notice to allow sufficient numbers of fish to be trapped for the CTUIR. 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: April 16, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective May 1, 2008 through June 15, 2008, in those waters of the Columbia River adjacent to Ringold Springs Rearing Facility (in Franklin County), from the Washington Department of Fish and Wildlife markers 1/4 mile downstream of the Ringold irrigation wastewater outlet, to the markers 1/2 mile upstream of Ringold Springs Creek, the daily limit is two hatchery salmon, and the minimum size 12 inches in length. Fishing only from the hatchery side (east bank) and only from the bank. Night closure and non-buoyant lure restrictions in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 16, 2008:

WAC 232-28-61900X	Exceptions to statewide rules—Columbia River (Ringold)
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**WSR 08-09-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-74—Filed April 17, 2008, 3:18 p.m., effective April 21, 2008, 12:01 a.m.]

Effective Date of Rule: April 21, 2008, 12:01 a.m.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relation-

ship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Effective 12:01 a.m. Monday, April 21, 2008, closes spring recreational salmon angling below Bonneville Dam prior to the scheduled May 1 closure date. Permanent regulations will apply to the area below Bonneville Dam. Rule is consistent with joint state actions of Washington department of fish and wildlife (WDFW) and Oregon department of fish and wildlife (ODFW) on February 15, 2008, and April 16, 2008. There is insufficient time to promulgate permanent regulations. The season is consistent with Washington fish and wildlife commission guidance for 2008 and the 2005-2007 *U.S. v. Oregon* Interim Management Agreement.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries.

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

the WDFW and ODFW convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

The upriver spring chinook return in the Columbia River is projected to be 78,500 fish. With a projected run of this size, additional opportunity for sport fisheries in the Columbia River is available under the ESA impact guideline of 1.5% of the upriver run. The season is consistent with Washington fish and wildlife commission guidance for 2006-2007 and the 2005-2007 *U.S. v. Oregon* Interim Management Agreement. The extended season is expected to allow for harvest of hatchery chinook while minimizing impacts to ESA listed species. Rule is consistent with joint state actions of WDFW and ODFW on January 25, 2008. There is insufficient time to promulgate permanent regulations.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: April 17, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 21, 2008 until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River:

i. From Tower Island power lines in Bonneville Pool upstream to McNary Dam, plus Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations): Salmon, steelhead and shad: Open immediately through May 10, 2008. Daily limit 6 salmon, of which no more than 2 may be adult salmon. Release all wild Chinook, wild coho (below Hood River Bridge), sockeye and chum. Minimum size 12 inches. Daily limit 2 trout; release wild steelhead. Minimum size 12 inches.

ii. For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point/Tongue Point line, effective through June 15, 2008, salmon and steelhead required to be released may not be totally removed from the

water; except, anglers fishing from vessels thirty feet or longer as shown on their state registration or Coast Guard documentation are exempt from this subsection.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 21, 2008:

WAC 232-28-61900D	Exceptions to statewide rules—Columbia River. (08-29)
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The following section of the Washington Administrative Code is repealed, effective June 16, 2008:

WAC 232-28-61900Y	Exceptions to statewide rules—Columbia River.
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WSR 08-09-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-75—Filed April 17, 2008, 3:19 p.m., effective April 17, 2008, 3:19 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The preseason forecast is for 10,000 adult spring chinook to return to the Wind River this year. The hatchery escapement goal is expected to be met and additional fish are available for harvest. 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: April 17, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Wind River (Skamania Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through June 30, 2008, a person may fish for salmon in waters of the Wind River from mouth (boundary line/markers) to 400 feet below Shipherd Falls and from 100 feet above Shipherd Falls to boundary markers approximately 800 yards downstream of Carson National Fish Hatchery. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Release all wild chinook downstream of Shipherd falls. Night closure and non-buoyant lure restrictions in effect. Only fish hooked inside the mouth may be retained. Closed waters from 400 feet below Coffey Dam to 100 feet above.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2008:

WAC 232-28-61900Z	Exceptions to statewide rules—Wind River (Skamania Co.)
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WSR 08-09-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-77—Filed April 18, 2008, 2:28 p.m., effective May 1, 2008]

Effective Date of Rule: May 1, 2008.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Yakama Nation and Washington department of fish and wildlife fishery managers are forecasting a return of approximately 10,060 spring chinook to the Yakima River in 2008. Approximately 4,860 fish (48% of the total run) are predicted to be hatchery salmon from the Yakima/Klickitat Fisheries Project research hatchery at Cle

Elum. State and tribal managers estimate that only 2,730 (27%) of the total run will be wild Naches River chinook the weaker of the two wild stocks returning to the Yakima Basin and not supplemented by hatchery production. Due to the weaker run of Naches wild chinook expected this year, all wild fish will be protected from sport harvest. 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: April 18, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—Yakima River. (1) Notwithstanding the provisions of WAC 232-28-619, effective May 1 through May 31, 2008, a person may fish for salmon in waters of the Yakima River from the Interstate 182 bridge in Richland upstream to the SR 224 bridge at Benton City and from the Interstate 82 bridge at Union Gap upstream to 3,500 feet downstream of Roza Dam ("closed water" boundary markers).

(a) Daily limit of two hatchery salmon. Minimum size of 12 inches in length.

(b) Night closure in effect.

(c) One, single-pointed, barbless hook with a gap from point to shank of 3/4 inch or less required for all species.

(d) Closed to fishing for all species 400 feet downstream of Horn Rapids (Wanawish) Dam, and 400 feet upstream from the upstream side of the Yakima Ave./Terrace Heights Rd. bridge in Yakima, including the area adjacent and downstream of the Roza Wasteway No. 2 fish barrier rack next to Morton & Sons, Inc.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 1, 2008:

WAC 232-28-61900A Exceptions to statewide rules—Yakima River.

WSR 08-09-113
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-80—Filed April 21, 2008, 3:39 p.m., effective June 22, 2008]

Effective Date of Rule: June 22, 2008.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: There are sufficient numbers of hatchery origin fish, within allowable limits for potential impacts upon wild fish, to open this Snake River fishery. 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: April 21, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective April 22 through June 15, 2008, a person may fish for and possess salmon in waters of the Snake River from the Railroad Bridge crossing the Snake River above the mouth upstream to the no-fishing zone 400 feet below Ice Harbor Dam. Daily limit of two hatchery Chinook salmon. Minimum size 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8 inch (point of hook to shank) when fishing for all species except sturgeon.

(d) Night closure is in effect.

(2) Effective April 24 through June 15, 2008, a person may fish for and possess salmon in waters of the Snake River from Texas Rapids Boat Launch upstream about 7 miles to the boat launch approximately 1 mile upstream of Little Goose Dam.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8 inch (point of hook to shank) when fishing for all species except sturgeon.

(d) Night closure is in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 16, 2008:

WAC 232-28-61900C	Exceptions to statewide rules—Snake River.
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WSR 08-09-128
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-76—Filed April 22, 2008, 1:05 p.m., effective May 3, 2008]

Effective Date of Rule: May 3, 2008.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-24-040.

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: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. 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: April 22, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-24-04000J All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

May 3 through May 6, 2008;
 May 10 through May 13, 2008;
 May 17 through May 20, 2008;
 May 31 through June 3, 2008;
 June 7 through June 10, 2008;
 June 14 through June 17, 2008;
 June 21 through June 24, 2008;
 June 28 through June 30, 2008;

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Landing and possession limit of 50 chinook per boat per entire open period for the entire catch areas 1, 2, 3 and 4 from May 3 through June 30, 2008.

(4) Minimum size for chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line run-

ning northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) Mandatory Yelloweye Rockfish Conservation Area - The area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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 08-09-141
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-82—Filed April 23, 2008, 9:04 a.m., effective May 1, 2008, 12:01 a.m.]

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

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000V 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 bottomfish, 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: April 23, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-44-05000W Coastal bottomfish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective 12:01 a.m. May 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 73, Number 76, published on April 18, 2008. 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. May 1, 2008:

WAC 220-44-05000V	Coastal bottomfish catch limits. (07-300)
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WSR 08-09-142
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-81—Filed April 23, 2008, 9:08 a.m., effective April 23, 2008, 9:08 a.m.]

Effective Date of Rule: Immediately.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Allows the catch and release fishery to resume on Tuesdays. The annual season for recreational white sturgeon fisheries above Wauna power lines in the mainstem Columbia River reverts back to original fishery adopted by compact on December 13, 2007. Rule is consistent with joint state actions of Washington department of fish and wildlife (WDFW) and Oregon department of fish and wildlife (ODFW) on December 13, 2007, and April 16, 2008. There is insufficient time to promulgate permanent regulations. The season is consistent with Washington fish and wildlife commission guidance for 2008 and the 2005-2007 *U.S. v Oregon* interim management agreement.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries.

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

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 23, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619, effective immediately 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 that a person may fish for and retain white sturgeon on Thursdays, Fridays, Saturdays and Sundays.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900E	Exceptions to statewide rules—Columbia River sturgeon (08-31)
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**WSR 08-09-151
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed April 23, 2008, 10:57 a.m., effective April 23, 2008, 10:57 a.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Certain students of the 2008 graduating class may be negatively impacted by existing rules within the affected WAC. Emergency rule adoption ensures that these students can access alternatives to the state graduation requirements that are more relevant to their specific situation.

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

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

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

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

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

Date Adopted: April 18, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

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

WAC 392-501-510 Access to alternative assessment.

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

(2) Students who transfer into a public school from within the state and are entering the 12th grade may individually be granted permission to utilize an objective alternative assessment for meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the Washington assessment of student learning. The superintendent of public instruction shall develop timelines and an application form for this purpose, and shall grant or deny the request based upon consideration of the unique circumstances of the student and any hardships or unavoidable hindrances that may be caused by the student's participating in the Washington assessment of student learning.

WSR 08-09-152
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 23, 2008, 10:59 a.m., effective April 23, 2008, 10:59 a.m.]

Effective Date of Rule: Immediately.

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

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

Statutory Authority for Adoption: RCW 28A.665.065, 28A.665.061, 28A.155.045.

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

Reasons for this Finding: Certain students of the 2008 graduating class may be negatively impacted by existing rules within the affected WAC. Emergency rule adoption ensures that these students can access alternatives to the state graduation requirements that are more relevant to their specific situation.

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

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

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

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

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

Date Adopted: April 18, 2008.

Dr. Terry Bergeson
 Superintendent of
 Public Instruction

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

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

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

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

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

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

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

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

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

(iv) A student's cognitive development being identified at the awareness level. Students with cognitive development at the awareness level exhibit behaviors that include, but are not limited to, the following:

- Having limited intentionality and being unable to communicate using presymbolic strategies.

- Reactions to environmental stimuli are limited to crying, opening eyes, movement, etc.

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

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

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

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

Research defining cognitive development at the awareness level continues to be refined and detailed. Outcomes from continued research will translate to the criteria and guidelines referenced above.

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

- (c) Loss of the assessment material;

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

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

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

(3) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school ((an)) one of two appeal application ((or a)) forms developed by the superintendent of public instruction. A specific appeal application form is provided for students falling under the criteria of subsection (2)(a)(iv) of this section.

(4) For all criteria other than that in subsection (2)(a)(iv) of this section, the application shall require that the following be submitted: All available score reports from prior standardized assessments taken by the student, the medical condition report (if applicable), and the student's transcript. The principal of the school shall review the application and accompanying material and certify that, to the best of his or her knowledge, the information in the application is accurate and complete. For students under the criteria of subsection (2)(a)(iv) of this section the following steps are required to be documented on the appeal form and may be applied for in all or a single tested content area of study:

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

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

(c) The special education teacher responsible for the individualized education program or IEP of the student completes and signs an awareness waiver application form and documents the student's nonparticipation in the state assessment system in the student's IEP.

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

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

(f) The district assessment coordinator signs and faxes the waiver application form to the superintendent of public instruction.

((4)) (5) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the state superintendent of public instruction.

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

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

WAC 392-501-602 High school graduation certificate appeals review board and approval criteria. (1) The high school graduation certificate appeals review board shall be created to review and make recommendations to the superintendent of public instruction on all special, unavoidable circumstance appeal applications except those covered under WAC 392-501-601 (2)(a)(iv).

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

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

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

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

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

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

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

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

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

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

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

- (i) Trends indicated by prior WASL or alternate assessment results;
- (ii) How near the student has been in achieving the standard;
- (iii) Scores on other assessments, as available;
- (iv) Participation and successful completion of remediation courses and other academic assistance opportunities;
- (v) Cumulative grade point average;
- (vi) Whether the student has taken advanced placement, honors, or other higher-level courses; and
- (vii) Other available information deemed relevant by the board.

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

- (a) Grant the appeal and waive the requirement that a student earn a certificate to graduate;
- (b) Deny the appeal and not waive the certificate; or
- (c) Remand the appeal back to the appeals board for further information or deliberation.

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

(9) For students appealing under the criteria of WAC 392-501-601 (2)(a)(iv):

(i) Staff from the office of superintendent of public instruction shall record a status of "waived" for the student followed by a confirmation e-mail to the student's high school principal and the district assessment coordinator.

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

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

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