



## EXPEDITED RULE MAKING

### CR-105 (December 2017) (Implements RCW 34.05.353)

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FILED

DATE: November 16, 2018

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WSR 18-23-059

**Agency:** Department of Social and Health Services, Economic Services Administration

**Title of rule and other identifying information:** (describe subject) The Division of Child Support (DCS) proposes to adopt new rules and amend existing rules in chapter 388-14A WAC to implement changes to the Uniform Interstate Family Support Act (UIFSA, adopted in Washington as chapter 26.21A RCW) which were made to implement the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (known as the Hague Convention on Child Support).

Those statutory changes were adopted under Engrossed Substitute Senate Bill 5498 (ESSB 5498, Chapter 214, Laws of 2015) as part of Washington's state plan under Title IV-D of the federal Social Security Act. On September 29, 2014, President Obama signed into law H.R. 4980, entitled the Preventing Sex Trafficking and Strengthening Families Act ("the Act"), which became Public Law 113-183, which included a requirement that states adopt the Uniform Interstate Family Support Act (UIFSA) 2008 by July 1, 2015, as part of the state plan for the child support program under Title IV-D of the federal Social Security Act. 42 USC 654(20)(A); 42 USC 666(f).

These proposed changes describe the procedures to be followed when DCS is enforcing or modifying a convention order, which is a child support order that was issued by a tribunal in a foreign country which has ratified the Hague Convention on Child Support.

DCS proposes to amend the following rules:

WAC 388-14A-7100 "The division of child support may register an order from a tribe or another state or country for enforcement or modification"

WAC 388-14A-7110 "The division of child support may enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state"

DCS proposes to adopt the following new rules:

WAC 388-14A-7000 "The division of child support may register an order from a non-Washington jurisdiction for enforcement or modification"

WAC 388-14A-7005 "The division of child support may register an order from a foreign country under the Hague Convention on Child Support for enforcement or modification"

WAC 388-14A-7010 "What happens at a hearing on a notice of support debt and registration under the Hague Convention on Child Support?"

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Chapter 26.21A RCW and chapter 388-14A WAC have long had procedures and processes for dealing with child support orders issued by a tribunal of another state, country, or jurisdiction. These orders are called foreign orders, or intergovernmental orders. The Hague Convention on Child Support, as implemented in the latest version of UIFSA, introduces a new type of foreign order called a convention order, which requires specific procedures and processes.

This proposal is intended to establish the rules for dealing with convention orders, and to clarify when the existing rules for foreign orders also apply to convention orders.

**Reasons supporting proposal:** As required under the state plan under Title IV-D of the Social Security Act, Washington adopted verbatim the 2008 version of Uniform Interstate Family Support Act (UIFSA), amending chapter 26.21A RCW. The proposed new and amended rules adopt or incorporate by reference without material change the procedures to be followed when the state is requested to enforce or modify a child support order that was issued by a tribunal in a foreign country which has ratified the Hague Convention on Child Support.

**Statutory authority for adoption:** RCW 74.08.090, RCW 26.23.120(2), RCW 43.20A.550, RCW 74.04.055, RCW 74.04.057, RCW 74.20A.310, RCW 74.20.040; 45 C.F.R. Parts 301.1, 302.36, 302.39, 303.7, 303.11, 305.63, and 308.2. RCW 34.05.353(1) authorizes the use of the expedited process to adopt these rules because: (b) the proposed rules adopt or incorporate by reference without material change Washington state statutes which were adopted as a federal requirement; and (d) the content of the proposed rules is explicitly and specifically dictated by statute.

**Statute being implemented:** RCW 26.21A.601 through RCW 26.21A.630

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Name of proponent:** (person or organization) Department of Social and Health Services  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Nancy Koptur	DCS HQ, PO Box 9162, Olympia WA 98507	360-664-5065
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**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Expedited Adoption - Which of the following criteria was used by the agency to file this notice:**

- Relates only to internal governmental operations that are not subject to violation by a person;  
 Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;  
 Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;  
 Content is explicitly and specifically dictated by statute;  
 Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or  
 Is being amended after a review under RCW 34.05.328.

**Expedited Repeal - Which of the following criteria was used by the agency to file notice:**

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;  
 The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;  
 The rule is no longer necessary because of changed circumstances; or  
 Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

**Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):** The proposed new and amended rules adopt or incorporate by reference without material change Washington state statutes which were adopted as part of the requirements of our state plan under the federal Social Security Act; and the content of the proposed rules is explicitly and specifically dictated by statute.

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

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**AND RECEIVED BY** (date) January 21, 2019

**Date:** November 14, 2018

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**

A handwritten signature in blue ink that reads "Katherine I. Vasquez". The signature is written in a cursive style with a long, sweeping underline.

NEW SECTION

**WAC 388-14A-7000 The division of child support may register an order from a non-Washington jurisdiction for enforcement or modification.**

(1) A child support order issued by a tribunal of another state, country, or jurisdiction is referred to in this chapter as a foreign order or an intergovernmental order. As described in subsection (3) of this section, there is a type of foreign order known as a convention order.

(2) Except for convention orders described in subsection (3) of this section, a child support order issued by a tribunal of another state or jurisdiction may be registered in this state for enforcement or modification at the request of a party to the order or at the request of the support enforcement agency of a tribe or of another state or country, using the Notice of Support Debt and Registration (NOSDR) as provided in WAC 388-14A-7100.

(3) Support orders issued by a tribunal in a foreign country which has ratified the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (known as the Hague Convention on Child Support) are known as convention orders. Convention orders may be registered in this state for enforcement or modification at the request of a party to the order or at the request of that country, using the Notice of Support Debt and Registration-Hague Convention on Child Support (NOSDR-HC) as provided in WAC 388-14A-7005.

(4) The Hague Convention on Child Support may, for the purposes of this chapter, also be known as the "Hague Convention."

NEW SECTION

**WAC 388-14A-7005 The division of child support may register an order from a foreign country under the Hague Convention on Child Support for enforcement or modification.**

(1) A child support order issued by a tribunal of a foreign country which has ratified the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (known as the Hague Convention on Child Support) may be registered in this state for enforcement pursuant to chapter 26.21A RCW at the request of a party to the convention order or at the request of the support enforcement agency of the foreign country.

(a) Such an order is, for the purposes of this chapter, known as a "convention order."

(b) At the option of the division of child support (DCS), a convention order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A convention order is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered convention order in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under convention orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS notifies the parties that it is enforcing a convention order using the Notice of Support Debt and Registration under the Hague Convention (NOSDR-HC) as provided in this section.

(2) DCS must give notice to the nonregistering party when it administratively registers a convention order. DCS gives this notice by using the Notice of Support Debt and Registration under the Hague Convention (NOSDR-HC).

(a) The notice must inform the nonregistering party:

(i) That a registered convention order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered convention order, the party must request a hearing within thirty days after service of the notice on the nonregistering party, or if the contesting party does not reside in the United States, the contest must be filed no later than sixty days after notice of the registration;

(iii) That failure to contest the validity or enforcement of the registered convention order in a timely manner will result in confirmation and enforcement of the convention order and any alleged arrearages and such failure to contest the notice precludes further contest of the convention order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The Notice of Support Debt and Registration under the Hague Convention (NOSDR-HC) must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party or entity by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered convention order and any documents and relevant information accompanying the convention order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered convention order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued by a foreign country that has ratified the Hague Convention on Child Support may register the convention order in this state according to RCW 26.21A.613 through 26.21A.615.

(a) The convention order must be registered as provided in subsection (1)(b) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a convention child support order registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered convention order may be modified only if the requirements of RCW 26.21A.550 are met.

(4) Interpretation of the registered convention order is governed by RCW 26.21A.515.

NEW SECTION

**WAC 388-14A-7010 What happens at a hearing on a notice of support debt and registration under the Hague Convention on Child Support?** (1) After the service of a Notice of Support Debt and Registration under the Hague Convention (NOSDR-HC) as described in WAC 388-14A-7005, either party to the convention order may object and request a hearing on the notice.

(2) A hearing under this section is for the limited purpose of determining if the nonregistering party (also called the contesting party for the purposes of this section) can prove one or more of the defenses listed in RCW 26.21A.617.

(3) If the contesting party presents evidence establishing a full or partial defense under 26.21A.617, the presiding officer must:

(a) Not limit the right of the division of child support (DCS) to enforce any severable parts of the convention order;

(b) Continue the proceeding to allow the parties to gather additional relevant evidence; or

(c) Issue other appropriate orders.

(4) As provided in RCW 26.21A.620, DCS may enforce an uncontested portion of the registered convention order by all remedies available under the law of this state before there is a final administrative order.

(5) If the contesting party does not establish a defense under 26.21A.617 to the validity or enforcement of the convention order, the presiding officer must issue an order confirming the registered convention order.

(6) The other party to the convention order may participate as a party to any hearing under this section.

(7) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

(a) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(b) The issuing tribunal lacked personal jurisdiction consistent with RCW 26.21A.100;

(c) The order is not enforceable in the issuing country;

(d) The order was obtained by fraud in connection with a matter of procedure;

(e) A record transmitted in accordance with RCW 26.21A.613 lacks authenticity or integrity;

(f) A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(g) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this chapter in this state;

(h) Payment, to the extent alleged arrears have been paid in whole or in part;

(i) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(i) If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(ii) If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(j) The order was made in violation of RCW 26.21A.625.

(8) If the presiding officer does not recognize the convention support order under subsection (7)(b), (7)(d) or (7)(i) of this section, the presiding officer may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order.

(9) DCS must take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under RCW 26.21A.607.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

**WAC 388-14A-7100 The division of child support may register an order from a tribe or another state or country for enforcement or modification.** (1) A child support order or an income-withholding order for support issued by a tribunal of another state or jurisdiction may be registered in this state for enforcement pursuant to chapter 26.21A RCW at the request of a party to the order or at the request of the support enforcement agency of an Indian tribe or of another state or country.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state or jurisdiction is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state or jurisdiction in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order

issued in another state or jurisdiction. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state or jurisdiction may register the order in this state according to RCW 26.21A.540 through 26.21A.550.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state or jurisdiction registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21A.550 are met.

(4) Interpretation of the registered order is governed by RCW 26.21A.515.

(5) For information about the registration of a child support order under the 23 November 2007 Convention on the International Recover of Child Support and Other Forms of Family Maintenance, see WAC 388-14A-7005.

**WAC 388-14A-7110 The division of child support may enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state.** (1) The division of child support (DCS) may accept an intergovernmental request to enforce interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; ~~((or))~~

(iv) A foreign country which has ratified the Hague Convention on Child Support; or

(v) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) The party requesting that DCS enforce interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to enforce interest on an out-of-state support order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to enforce interest on the foreign order. See WAC 388-14A-7100 and 388-14A-7005 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to enforce interest on the out of state order. See WAC 388-14A-7100 and 388-14A-7005 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC 388-14A-7125 ~~((and))~~, 388-14A-7115, and 388-14A-7005.

(a) WAC 388-14A-7135 describes the procedures for confirmation of the registered order.

(b) WAC 388-14A-7135 describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.