WSR 24-12-004
PROPOSED RULES
PARKS AND RECREATION
COMMISSION
[Filed May 22, 2024, 2:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-02-015 and 24-09-075.

Title of Rule and Other Identifying Information: WAC 352-32-030 proposal will eliminate the extended off-season length of stay. Some parks are experiencing more people coming into the parks during the "off season," staying longer, and in some cases, creating additional work for staff in the form of multiple contacts for payment, and other issues. The WAC 352-32-010 definition of residence aligns with proposed WAC 352-32-030 that requires updating.

Hearing Location(s): On July 18, 2024, at 9:00 a.m., at the Four Points by Sheraton Bellingham Hotel and Conference, 714 Lakeway Drive, Bellingham, WA 98229.

Date of Intended Adoption: July 18, 2024.

Submit Written Comments to: Emily Weathers, 1111 Israel Road S.W., Olympia, WA 98504-2650, email Emily.Weathers@parks.wa.gov, beginning December 27, 2022, by July 12, 2024.

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, fax 360-586-0355, TTY 711, email Becki.Ellison@parks.wa.gov, by July 12, 2024.

Reasons Supporting Proposal: WAC 352-32-010 defines residence. Within the definition of residence, it references WAC 352-32-030 camping stay limits. This update is to align with the same updates we are proposing to make on WAC 352-32-030.

WAC 352-32-030 proposal will eliminate the extended off-season length of stay. Some parks are experiencing more people coming into the parks during the "off season," staying longer, and in some cases, creating additional work for staff in the form of multiple contacts for payment, and other issues.

Statutory Authority for Adoption: Chapter 79A.05 RCW.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Emily Weathers, 1111 Israel Road S.W., Tumwater, WA 98504-2650, 360-902-8848; Implementation: Robert Ingram, 1111 Israel Road S.W., Tumwater, WA 98504-2650, 360-902-8615; and Enforcement: Robert Ingram and Park Rangers, 1111 Israel Road S.W., Tumwater, WA 98504-2650, 360-902-8615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rule changes will not affect small businesses in the area to change their mode of operation. This rule revision will limit the number of days to camp in state parks, which will prohibit establishing a resident in a state park. Modifying the definition aligns with WAC 352-32-030 revision.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.
Is exempt under RCW 19.85.025(4).
Scope of exemption for rule proposal:
Is fully exempt.

May 22, 2024
Valeria Veasley
Management Analyst

OTS-5456.1

AMENDATORY SECTION (Amending WSR 16-10-002, filed 4/20/16, effective 5/21/16)

WAC 352-32-010 Definitions. Whenever used in this chapter the following terms shall be defined as herein indicated:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Aquatic facility" shall mean any structure or area within a state park designated by the director or designee for aquatic activities including, but not limited to, swimming pools, wading pools, swimming beaches, floats, docks, ramps, piers or underwater parks.

"Bivouac" shall mean to camp overnight on a vertical rock climbing route on a ledge or in a hammock sling.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Camping party" shall mean an individual or a group of people (two or more persons not to exceed eight) that is organized, equipped and capable of sustaining its own camping activity in a single campsite. A "camping party" is a "camping unit" for purposes of RCW 79A.05.065.

"Commercial recreation provider" is any individual or organization that packages and sells a service that meets the definition of a commercial recreation use.

"Commercial recreation use" is a recreational activity in a state park that is packaged and sold as a service by an organization or individual, other than state parks or a state park concessionaire.

"Commercial use (nonrecreation)" is any activity involving commercial or business purpose within a state park that may impact park facilities, park visitors or staff and is compatible with recreational use and stewardship, limited in duration and does not significantly block/alter access or negatively impact recreational users.

"Commission" shall mean the Washington state parks and recreation commission.

"Conference center" shall mean a state park facility designated as such by the director or designee that provides specialized serv-

ices, day-use and overnight accommodations available by reservation for organized group activities.

"Day area parking space" shall mean any designated parking space within any state park area designated for daytime vehicle parking.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Disrobe" shall mean to undress so as to appear nude.

"Emergency area" is an area in the park separate from the designated overnight camping area, which the park manager decides may be used for camping when no alternative camping facilities are available within reasonable driving distances.

"Environmental interpretation" shall mean the provision of services, materials, publications and/or facilities, including environmental learning centers (ELCs), for other than basic access to parks and individual camping, picnicking, and boating in parks, that enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage through agency directed or self-learning activities.

"Environmental learning centers (ELCs)" shall mean those specialized facilities, designated by the director or designee, designed to promote outdoor recreation experiences and environmental education in a range of state park settings.

"Extra vehicle" shall mean each additional unhitched vehicle in excess of the one recreational vehicle that will be parked in a designated campsite or parking area for overnight.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbeques and charcoal.

"Fish" shall mean all marine and freshwater fish and shellfish species including all species of aquatic invertebrates.

"Foster family home" means an agency which regularly provides care on a ((~~twenty-four~~)) 24-hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed.

"Geocache" shall mean geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called "geocachers") use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Group" shall mean ((~~twenty~~)) 20 or more people engaged together in an activity.

"Group camping areas" are designated areas usually primitive with minimal utilities and site amenities and are for the use of organized groups. Facilities and extent of development vary from park to park.

"Hiker/biker campsite" shall mean a campsite that is to be used solely by visitors arriving at the park on foot or bicycle.

"Intimidate" means to engage in conduct that would make a reasonable person fearful.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

"Multiple campsite" shall mean a designated and posted camping facility encompassing two or more individual standard, utility or primitive campsites.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 shall not constitute obstruction of pedestrian or vehicular traffic.

"Out-of-home care" means placement in a foster family home or with a person related to the child under the authority of chapters 13.32A, 13.34, or 74.13 RCW.

"Overflow area" shall mean an area in a park separate from designated overnight and emergency camping areas, designated by the park manager, for camping to accommodate peak camping demands in the geographic region.

"Overnight accommodations" shall mean any facility or site designated for overnight occupancy within a state park area.

"Paraglider" shall mean an unpowered ultralight vehicle capable of flight, consisting of a fabric, rectangular or elliptical canopy or wing connected to the pilot by suspension lines and straps, made entirely of nonrigid materials except for the pilot's harness and fasteners. The term "paraglider" shall not include hang gliders or parachutes.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Person related to the child" means those persons referred to in RCW 74.15.020 (2)(a)(i) through (vi).

"Personal watercraft" means a vessel of less than ((~~sixteen~~)) 16 feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

"Popular destination park" shall mean any state park designated by the director or designee as a popular destination park because, it is typically occupied to capacity on Friday or Saturday night during the high use season.

"Primitive campsite" shall mean a campsite not provided with flush comfort station nearby and which may not have any of the amenities of a standard campsite.

"Public assembly" shall mean a meeting, rally, gathering, demonstration, vigil, picketing, speechmaking, march, parade, religious service, or other congregation of persons for the purpose of public expression of views of a political or religious nature for which there is a reasonable expectation that a minimum of ((~~twenty~~)) 20 persons will attend based on information provided by the applicant. Public assemblies must be open to all members of the public, and are generally the subject of attendance solicitations circulated prior to the event, such as media advertising, flyers, brochures, word-of-mouth notification, or other form of prior encouragement to attend.

Alternatively, the agency director or designee may declare an event to be a public assembly in the following cases: Where evidentiary circumstances and supporting material suggest that more than ((~~one hundred~~)) 100 persons will attend, even where the applicant does not indicate such an expectation; or where there is reason to expect a

need for special preparations by the agency or the applicant, due to the nature or location of the event.

"Ranger" shall mean a duly appointed Washington state parks ranger who is vested with police powers under RCW 79A.05.160, and shall include the park manager in charge of any state park area.

"Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.

"Remote controlled aircraft" shall mean nonpeopled model aircraft and other unmanned aircraft systems, including those commonly known as "drones" that are flown by using internal combustion, electric motors, elastic tubing, or gravity/wind for propulsion. The flight is controlled by a person on the ground using a hand held radio control transmitter.

"Residence" shall mean the long-term habitation of facilities at a given state park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:

(1) Camping at a given park ((~~for more than thirty days within a forty-day time period April 1 through September 30; or forty days within a sixty-day time period October 1 through March 31. As provided in WAC 352-32-030(7), continuous occupancy of facilities by the same camping party shall be limited to ten consecutive nights April 1 through September 30. Provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights October 1 through March 31 in one park, after which the camping unit must vacate the overnight park facilities for three consecutive nights~~)) shall be no more than 10 nights in one park within a 30-day period. Total nights stayed not to exceed 90 days per calendar year in all state parks. The time period shall begin on the date for which the first night's fee is paid.

(2) The designation of the park facility as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.

"Seaweed" shall mean all species of marine algae and flowering sea grasses.

"Sno-park" shall mean any designated winter recreational parking area.

"Special groomed trail area" shall mean those sno-park areas designated by the director as requiring a special groomed trail permit.

"Special recreation event" shall mean a group recreation activity in a state park sponsored or organized by an individual or organization that requires reserving park areas, planning, facilities, staffing, or other services beyond the level normally provided at the state park to ensure public welfare and safety and facility and/or environmental protection.

"Standard campsite" shall mean a designated camping site which is served by nearby domestic water, sink waste, garbage disposal, and flush comfort station.

"State park area" shall mean any area under the ownership, management, or control of the commission, including trust lands which have been withdrawn from sale or lease by order of the commissioner of public lands and the management of which has been transferred to the commission, and specifically including all those areas defined in WAC 352-16-020. State park areas do not include the seashore conservation

area as defined in RCW 79A.05.605 and as regulated under chapter 352-37 WAC.

"Trailer dump station" shall mean any state park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle, other than as may be provided in a utility campsite.

"Upland" shall mean all lands lying above mean high water.

"Utility campsite" shall mean a standard campsite with the addition of electricity and which may have domestic water and/or sewer.

"Vehicle" shall include every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway. For the purposes of this chapter, this definition excludes bicycles, wheelchairs, motorized foot scooters, electric personal assistive mobility devices (EPAMDs), snowmobiles and other nonlicensed vehicles.

"Vehicle parking permit" means the permit issued on a daily, multiple day or annual basis for parking a vehicle in any state park area designated for daytime vehicle parking, excluding designated sno-park parking areas.

"Vessel" shall mean any watercraft used or capable of being used as a means of transportation on the water.

"Walk-in campsite" shall mean a campsite that is accessed only by walking to the site and which may or may not have vehicle parking available near by.

"Watercraft launch" is any developed launch ramp designated for the purpose of placing or retrieving watercraft into or out of the water.

"Water trail advisory committee" shall mean the ((~~twelve~~)) 12-member committee constituted by RCW 79A.05.420.

"Water trail camping sites" shall mean those specially designated group camp areas identified with signs, that are near water ways, and that have varying facilities and extent of development.

"Wood debris" shall mean down and dead tree material.

AMENDATORY SECTION (Amending WSR 13-17-037, filed 8/13/13, effective 9/13/13)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.

No person or camping party may use any state park facility for residence purposes, as defined (WAC 352-32-010).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom: (a) No later than 1:00 p.m., (b) if the applicable camping fee has not been paid, or (c) if the time limit for occupancy of the campsite has expired, or (d) the site is reserved by another party. Remaining in a campsite beyond the established checkout

time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign or when the campsite has an incoming reservation. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt to hold campsite(s), for another camping party for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping party must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee and providing the required information regarding the occupants of the other sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping parties. Multiple campsites in designated reservation parks may be reserved under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. ((~~April 1 through September 30:~~)) The maximum length of stay ((~~during this period shall be established annually for each park by the director or designee and~~)) shall be no ((~~less than ten and no~~)) more than ((~~fourteen~~)) 10 nights((~~. Campers may stay the established maximum consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights. October 1 through March 31: The maximum length of stay is twenty nights. Campers may stay twenty consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, not to exceed forty days in a sixty-day time period~~)) in one park within a 30-day period. Total nights stayed not to exceed 90 days per calendar year in all state parks.

(a) Length of stay limits shall be established by the director or designee.

(b) These limitations shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) A maximum of eight people shall be permitted at a campsite overnight, unless otherwise authorized by a ranger. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle: Provided, That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant. The number of tents allowed at each campsite shall be limited to the number that will fit on the developed tent pad or designated area as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles may occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are subject to the campsite capacity limitations as otherwise set forth in this section. Exceptions for emergencies may be approved by the ranger on an individual basis. Water trail site fees, as published by state parks, must be paid at the time the site is occupied.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site specific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas may be used only when all designated campsites are full and at the park ranger's discretion. Persons using emergency areas must pay the applicable campsite fee and must vacate the site when directed by the park ranger.

(13) Designated overflow camping areas may be used only when all designated campsites in a park are full and the demand for camping in the geographic area around the park appears to exceed available facilities. Persons using overflow camping areas must pay the applicable campsite fee.

(14) Overnight camping will be allowed in approved areas within designated sno-parks in Washington state parks, when posted, provided the appropriate required sno-park permit is displayed.

(15) Any violation of this section is an infraction under chapter 7.84 RCW.

WSR 24-12-018
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed May 24, 2024, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-07-104; and proposal is exempt under RCW 19.85.025(4).

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is amending WAC 388-14A-4900 Insurers must report claim information to the division of child support and withhold payments if directed. This rule-making action is to implement SB 5842 (chapter 126, Laws of 2024), which amends RCW 26.23.037 effective June 6, 2024. As a result of the legislation, the division of child support (DCS) is [required] to minimize the use of Social Security numbers reported directly to DCS by insurance companies complying with the mandatory reporting requirements of RCW 26.23.037.

Hearing Location(s): On July 10, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of Intended Adoption: Not earlier than July 11, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning June 5, 2024, 12:00 p.m., by July 10, 2024, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by June 26, 2024, by 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending WAC 388-14A-4900 to implement SB 5842 (chapter 126, Laws of 2024). SB 5842 amends RCW 26.23.037 to require DCS to minimize use of Social Security numbers reported directly to DCS by insurance companies.

Insurance companies have three different ways they can report insurance claim information to DCS under RCW 26.23.037. A direct report to DCS is one of those ways. The legislation does not change any of the "minimum identifying information" criteria imposed by the Office of Child Support Services or the Child Support Lien Network, the two other reporting methods. Nor does it prohibit insurance companies from including Social Security numbers as part of minimum identifying claim information. If an insurer reports claim information directly to DCS and does not include a Social Security number, DCS would only ask the insurer for the Social Security number if DCS is unable to identify the individual using full name, date of birth, and current physical address.

DCS proposes to reorder the sections in WAC 388-14A-4900 to better distinguish how insurers comply with RCW 26.23.037 when reporting directly to the DCS special collections unit, as opposed to reporting through the Office of Child Support Services or the Child Support Lien Network. In the list of minimum identifying information elements, DCS places Social Security number behind full name, date of birth, and

current physical address. DCS also proposes amendments of a technical nature to update the name of the Office of Child Support Enforcement to the Office of Child Support Services, and other changes recommended by the office of the code reviser's drafting guidelines.

Reasons Supporting Proposal: This rule making is required to implement SB 5842 (chapter 126, Laws of 2024). It will ensure insurers have sufficient information about the process to fully comply with the legal reporting requirements.

Statutory Authority for Adoption: RCW 26.23.037, 26.23.110, 74.08.090, and 74.20A.055.

Statute Being Implemented: RCW 26.23.037.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, economic services administration, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Monica Turnbaugh, DCS Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5339.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Although this rule meets the definition of a significant legislative rule under RCW 34.05.328(5), the requirement for a cost-benefit analysis does not apply because this rule adopts a state statute (RCW 34.05.328 (5)(b)(iii)) and the content of the rule is "explicitly and specifically dictated by statute" (RCW 34.05.328 (5)(b)(v)). This rule is exempt under RCW 34.05.328 (5)(b)(vii), Rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemption(s): This rule is exempt under RCW 34.05.328 (5)(b)(vii), Rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

Scope of exemption for rule proposal:

Is fully exempt.

May 20, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5035.1

AMENDATORY SECTION (Amending WSR 21-24-077, filed 11/30/21, effective 12/31/21)

WAC 388-14A-4900 Insurers must report claim information to the division of child support and withhold payments if directed. (1) Insurers must report certain insurance claims to the division of child

support (DCS). Within 10 days after opening a tort liability claim for bodily injury or wrongful death, a workers' compensation claim, or a claim under a policy of life insurance, including an annuity, the insurer must report sufficient information to ((~~the division of child support~~)) DCS to enable it to verify whether the claimant or other beneficiary owes child support. A claim is deemed opened when an insurer has sufficient information to:

(a) Identify the claimant;

(b) Determine that the claimant is entitled to payment of the insurance claim proceeds; and

(c) Make such payment. In the case of a claim that will be paid through periodic payments, the insurer must only report the claim before issuing the initial payment.

(2) Insurers can report information:

(a) To the federal office of child support services (OCSS) or the child support lien network (CSLN);

(b) Through an insurance claim data collection organization, which submits the required information to OCSS, CSLN, or the DCS special collections unit within the timeframes and in the manner required by law; or

(c) Directly to the DCS special collections unit, in writing or electronically, if the insurer does not have the capability to report through the above methods.

(3) The information reporting requirements are satisfied so long as the insurer provides minimum identifying information. ((~~Minimum identifying information about the claimant includes:~~))

(a) OCSS and CSLN maintain their own standards for minimum identifying information.

(b) For the purposes of reporting directly to the DCS special collections unit, minimum identifying information about the claim includes:

(i) The claimant's full name and date of birth;

((~~(b)~~)) (ii) The claimant's ((~~Social Security number, or if that is unavailable, the claimant's~~)) current physical address ((~~and date of birth~~));

(iii) The claimant's Social Security number, if full name, date of birth, and current physical address are not sufficient for DCS to identify the individual;

((~~(c)~~)) (iv) The insurer's name;

((~~(d)~~)) (v) The insurer's claims department address for lien receipt;

((~~(e)~~)) (vi) The insurer's claim number in the proper format for identification of the claim;

((~~(f)~~)) (vii) The insurer's claim date of loss;

((~~(g)~~)) (viii) The adjustor's name;

((~~(h)~~)) (ix) The adjustor's telephone number;

((~~(i)~~)) (x) The adjustor's email address; and

((~~(j)~~)) (xi) The insurer's fax number for receiving lien notices, if one exists.

((~~(3) Insurers can report information:~~

~~(a) To the federal office of child support enforcement or the child support lien network;~~

~~(b) Through an insurance claim data collection organization, which submits the required information to the federal office of child support enforcement, the child support lien network, or the division of child support within the timeframes and in the manner required by law; or~~

~~(c) To the division of child support special collections unit in writing or electronically, if the insurer does not have the capability to report through the above methods.~~))

(4) Upon receipt of claims information, ((~~the division of child support~~)) DCS will determine whether a child support debt exists. If so, ((~~the division of child support~~)) DCS will issue a notice to the insurer to withhold payment and remit to ((~~the division of child support~~)) DCS. An insurer is not required to remit payment to ((~~the division of child support~~)) DCS if the notice issued is received after the insurer has disbursed payment on the claim.

(5) ((~~The division of child support~~)) DCS will give any lien, claim, or demand for reasonable claim-related attorneys' fees, property damage, and medical costs priority over any withholding of payment. These costs must be final costs after all reductions have been pursued with interested parties.

WSR 24-12-057
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed June 3, 2024, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-015.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing new rules to implement the establishment of a state-funded guardianship and conservatorship assistance program by adding new sections in chapter 388-106 WAC. Services have been provided since 2022 under a pilot project status. The purpose of the proposed rules is to convert from pilot to program. The new sections include WAC 388-106-2100 What is the home and community services guardianship and conservatorship assistance program?, 388-106-2105 Definitions, 388-106-2110 Eligibility criteria, 388-106-2115 Referral process, 388-106-2120 Acceptance into the program, 388-106-2125 Reconsideration of acceptance determination, 388-106-2130 Notice of department decisions, 388-106-2135 Appeal of acceptance determination or discontinuation of program participation, 388-106-2140 Overpayment, 388-106-2145 Program hold and reinstatement or forfeiture of program participation, 388-106-2150 Estate recovery, 388-106-2155 Exception to rule (ETR), 388-106-2160 Personal needs allowance increase or participation reduction, and 388-106-2165 Split appointment.

Hearing Location(s): On July 10, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of Intended Adoption: Not earlier than July 11, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning at noon on June 5, 2024, by 5:00 p.m. on July 10, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on June 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing new rules to implement the establishment of a state-funded guardianship and conservatorship assistance program in alignment with the 2022 adoption of chapter 11.130 RCW by adding new sections in chapter 388-106 WAC. DSHS is adding new sections in chapter 388-106 WAC to support the establishment of the new guardianship and conservatorship assistance program. These sections include WAC 388-106-2100 to 388-106-2165. The proposed rules describe eligibility for the guardianship and conservatorship assistance program, the package of services provided for individuals who are referred by acute care hospitals who have been found unable to consent to services due to a qualifying neuro-cognitive disorder, and the contractor payments for services. The rules will describe services, duration, and payments.

Reasons Supporting Proposal: Washington state court implementation of chapter 11.130 RCW, The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act of 2022; the success of the home

and community services guardianship pilot project since July 2022, which will be converted from pilot to program status with approval of said rules.

Statutory Authority for Adoption: RCW 43.17.060, 43.20B.030, and 74.08.090.

Statute Being Implemented: RCW 43.17.060, 43.20B.030, 74.08.090; and Laws of 2022.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sarah Tremblay, P.O. Box 45600, Olympia, WA 98504, 564-999-1032; Enforcement: Kelli Emans, P.O. Box 45600, Olympia, WA 98504, 360-725-3213.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Sarah Tremblay, P.O. Box 45600, Olympia, WA 98504, phone 564-999-1032, email sarah.tremblay@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328.

Explanation of exemptions: DSHS has analyzed the probable costs and benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs. DSHS analysis revealed that there are no new costs imposed since the proposed rules describe the program, including eligibility requirements for participants and contractors. The rules themselves do not impose any new costs on businesses. If a business wants to participate in the program as a contractor then it must perform the service and will be paid according to the terms of the contract. Participation as a contractor is completely voluntary.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There is no cost, therefore no small business economic impact statement is required.

May 30, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5031.5

NEW SECTION

WAC 388-106-2100 What is the home and community services guardianship and conservatorship assistance program? (1) Subject to available state only funds, the department of social and health services

(DSHS) pays for certain fees and costs for professional guardianship and conservatorship services for eligible persons as described in WAC 388-106-2110.

(2) The amounts paid and which services and costs are covered are determined by DSHS in its sole discretion and are contained in contracts with certified professional guardians and conservators (CPGCs).

(3) Subject to available funds, and in its sole discretion, DSHS may file petitions for guardianship with a Washington state superior court for certain patients occupying beds in acute care hospitals who no longer require inpatient hospital care or who require assistance in accessing or maintaining long-term support and services (LTSS) services due to the person's inability to give consent.

NEW SECTION

WAC 388-106-2105 Definitions. (1) **"Aging and long-term support administration"** or **"ALTSA"** means an administration within DSHS.

(2) **"Client"** means a person who is an applicant for, or recipient of, any Washington apple health program, including managed care and long-term care. See definitions for "applicant" and "recipient" in RCW 74.09.741.

(3) **"Contractor"** means a certified professional guardian and conservator who has met contractor eligibility criteria and has executed a contract with DSHS to provide guardianship and conservatorship services through the state funded home and community services guardianship and conservatorship assistance program.

(4) **"Court order"** means any judgment, decree, instruction, or order of a Washington state superior court, a court of comparable jurisdiction of an Indian tribe, another state, or country.

(5) **"Decision-making assistance"** means support for an individual with diminished decision-making ability in making decisions affecting health, safety, or to manage financial affairs. Assistance includes, without limitation, acting as a representative payee, fiduciary, an attorney-in-fact, a trustee, or a certified professional guardian or conservator.

(6) **"DSHS"** means the department of social and health services.

(7) **"Due diligence"** means the acute care hospital has adequately investigated whether a family member or friend would be able and willing to serve as a lay guardian, and, if not, has contacted agencies and individuals providing professional guardianship and conservatorship services, has submitted a referral to the statewide guardianship listserv managed by the office of public guardianship (OPG) through the administrative office of the courts (AOC), and at least 14 days have elapsed without identification of a potential professional guardian for nomination.

(8) **"Estate Recovery"** means the state's process for recapturing the cost of long-term care services, related hospital, and prescription drug services from a recipient's estate. Federal and state laws allow states to recover state-funded services and certain medicaid costs.

(9) **"Guardian"** or **"Conservator"** means a professional individual, agency, or a corporate fiduciary (such as a nonprofit corporation or bank trust department) appointed by a court to assist and protect an individual who the court has determined requires assistance in managing their own affairs.

(10) **"Home and community services"** or **"HCS"** means a division within the DSHS aging and long-term support administration.

(11) **"LTSS"** means long-term support and services under the home and community services division.

(12) **"Neuro-cognitive disorder"** means a primary diagnosis of dementia, Alzheimer's, Parkinson's, Huntington's, traumatic brain injury, or stoke which results in the individual's lack of decision-making capacity impacting accessibility for long-term care benefits.

(13) **"Notice of department decisions"** means a generated written notice provided to an individual client or their legal representative or both identifying them of:

(a) The action taken by DSHS that impacts the individual client's benefits;

(b) The reason DSHS took said action;

(c) The legal authority to take said action;

(d) Date of the notice;

(e) Effective date of the action taken;

(f) Department representative contact information;

(g) Hearing rights; and

(h) Information about continued benefits, if any.

(14) **"Overpayment"** means any payment or benefit to a recipient or to a vendor in excess of that to which is entitled by law, rule, or contract, including amounts in dispute as outlined in chapter 41.05A RCW.

(15) **"Participation"** means the portion of the client's responsibility or financial obligation paid by the client to the provider to cover part or all of their cost of care.

(16) **"Private pay"** means the status for any period of time in which a client is ineligible for medicaid-funded LTSS and must use their own personal resources to pay for their services.

(17) **"Program hold"** means an intervention taken by DSHS to place future payment authorizations on hold whenever an approved state funded guardianship and conservatorship assistance program recipient is identified as financially ineligible for medicaid LTSS per chapter WAC 182-513-1315 (1)-(3). Under a program hold, a recipient's state funded guardianship and conservatorship assistance program slot can be held for up to 90 days from date of financial ineligibility discovery.

(18) **"Program recipient"** means an individual meeting eligibility criteria for inclusion into the state funded home and community services guardianship and conservatorship assistance program.

(19) **"Program slot"** means a program vacancy based on timeframe of needed resources as designated by "tier 1" and "tier 2". A tier 1 program slot is a slot with a maximum service benefit of up to 12 months duration. A tier 2 program slot is a continuous slot for individuals not required to pay participation towards their cost of care based on financial thresholds per WAC 182-513-1315 (1)-(3) or individuals who are not United States citizens.

(20) **"Provider one"** means the invoice processing system used by DSHS to process and pay some social service providers and contractors who provide care or services to medicaid clients.

(21) **"Provisional approval"** means the process of allowing clients a conditional approval for accessing the state funded guardianship and conservatorship assistance program under medicaid long-term services and supports (LTSS), without having to wait for the full functional and financial medicaid eligibility determination.

(22) **"Split appointment"** means when two or more individuals are appointed to serve as either a guardian, a conservator, co-guardians,

or co-conservators on a single case appointed under chapter 11.130 RCW.

(23) **"Successor guardian or conservator"** means a successor or replacement guardian or conservator appointed by the court to act on behalf of an individual subject to either guardianship, conservatorship, or both if the existing guardian or conservator resigns, dies, becomes incapacitated, is determined no longer qualified to serve, declines to serve the individual, or due to noncompliance with court reporting requirements or duties.

(24) **"Termination"** means the final termination order of a preestablished guardianship or conservatorship judicial matter or both which negates the previous orders of case establishment. Such an order restores the individual's civil rights and decision-making authority. A termination is completed through a judicial process by which the court determines that a preestablished guardianship or conservatorship matter or both no longer meets judicial grounds under RCW 11.130.265, that termination would be in the best interest of the adult based on a change in functionality or circumstances, or that less restrictive alternative protective arrangement is available to meet the needs of the individual.

(25) **"The certified professional guardian and conservator review board"** or **"CPGCRB"** means the regulatory board tasked by the administrative offices of the court (AOC) to oversee the statutory and regulatory requirements and to investigate guardian and conservator complaints of certified professional guardians and conservators (CPGCs) statewide.

(26) **"The guardianship or conservatorship"** means the establishment of a guardianship or conservatorship matter from the date of appointment of a guardian or conservator agent, not from the date of original petition.

(27) **"Tier 1"** means a one-year contract term for state-funded guardianship and conservatorship services under the state funded guardianship and conservatorship assistance program.

(28) **"Tier 2"** means an ongoing, renewable contract term for state-funded guardianship and conservatorship services under the state funded guardianship and conservatorship assistance program:

(a) When an individual is determined to:

(i) Not have financial ability to pay monthly guardianship or conservatorship fees through alternative participation reduction procedures due to lack of or limited income; or

(ii) Be a noncitizen approved for long-term care through the state-funded long-term care services program for noncitizens under WAC 182-507-0125.

(b) When starting the 13th month from the original appointment date, a contractor will be paid a monthly rate of $235.00, or a medicaid aligned guardianship or conservatorship monthly rate, whichever is greater, for a tier 2 client.

NEW SECTION

WAC 388-106-2110 Eligibility criteria. (1) To be eligible to participate as a contractor in the program a person must:

(a) Hold certification as a professional guardian and conservator approved by the state of Washington supreme court;

(b) Be in good standing with the certified professional guardian and conservator review board (CPGCRB);

(c) Have sufficient insurance coverage to meet DSHS contract requirements;

(d) Hold a program contract with DSHS; and

(e) Comply with the requirements of the program as described in this chapter.

(2) To be eligible to participate as a recipient in the program a person must:

(a) Meet long-term care services and supports (LTSS) medicaid functional eligibility requirements in chapter 388-106 WAC and financial eligibility requirements in WAC 182-513-1315 (1)-(3) or be determined provisionally approved;

(b) Not have financial resources to pay for guardianship services, fees, or costs from their estate;

(c) Have a qualifying neuro-cognitive diagnosis as defined in WAC 388-106-2105;

(d) At the time of referral and acceptance into the program, be occupying an acute care hospital bed, and not be in a restricted subgroup including current occupancy in a bed readiness program, skilled nursing facility, inpatient rehabilitation, inpatient mental health, emergency department, long-term acute care hospital bed, facility bed under observation status, or in a facility bed under a single bed certification pursuant to a cause under chapter 71.05 RCW;

(e) At the time of referral, no longer requires an inpatient level of care at an acute care hospital;

(f) Likely requires the appointment of a guardian or conservator to be able to access and maintain long-term services and support; and

(g) Not have a professional or lay guardian or conservator willing to accept nomination.

(3) To remain eligible to participate as a recipient in the program a person must:

(a) Remain functionally and financially eligible for DSHS LTSS benefits; and

(b) Receive a DSHS LTSS service.

NEW SECTION

WAC 388-106-2115 Referral process. (1) An acute care hospital may submit a referral to home and community services under the following circumstances:

(a) Acute care hospital clinicians have determined that the person likely needs a guardian or conservator;

(b) The acute care hospital has a good faith belief that the person meets the eligibility requirements to participate in the program;

(c) The acute care hospital has documented due diligence in attempting to identify a proposed guardian or conservator;

(d) The acute care hospital has submitted a long-term care medicaid application to DSHS on behalf of the person;

(e) The acute care hospital provides complete referral documents as required by DSHS; and

(f) The acute care hospital has, or will file, a petition for guardianship or conservatorship.

(2) DSHS, in its sole discretion, and subject to available funds, may waive the requirement of subsection (f) of this section and file a

petition for guardianship or conservatorship or both instead of the referring acute care hospital.

NEW SECTION

WAC 388-106-2120 Acceptance into the program. (1) Within available resources, home and community services will accept a person into the guardianship and conservatorship assistance program if DSHS determines that the person meets the eligibility requirements, the referral packet is complete, and there is a program slot available at the time of acceptance.

(2) DSHS prioritizes acceptance into the program on a first-come, first-served basis determined by the date DSHS receives a complete referral packet and DSHS completes an eligibility determination for the person.

(3) If there is not an appropriate program slot available for an eligible person, DSHS will put them on the waitlist for the determined tier slot. Placement on the waitlist does not guarantee that a person will be accepted into the program.

(4) Waitlist priority is determined based on a first-come basis utilizing the date DSHS receives a complete referral packet and DSHS completes an eligibility determination for the person.

(5) In the event that a person is found eligible for a tier 2 slot, but at the time of acceptance only a tier 1 slot is available, DSHS will accept the person into the tier 1 slot while simultaneously placing the person on the waitlist for a tier 2 slot. Acceptance into the tier 2 waitlist does not guarantee that a person will be accepted into the program under a tier 2 slot designation.

(6) Once a person is accepted into a program slot, DSHS makes a referral to all program contracted certified professional guardians and conservators for consideration of acceptance of nomination. DSHS has the sole discretion to remove a person from the program if after two months of initial contractor referral, no program contracted certified professional guardian or conservator agrees to accept the case for nomination by the court.

(7) Removal from the guardianship and conservatorship assistance program in no way affects the person's ability to be rereferred and reconsidered for inclusion onto the guardianship and conservatorship assistance program at a future date.

NEW SECTION

WAC 388-106-2125 Reconsideration of acceptance determination. A referring acute care hospital may request that DSHS reconsider its decision to accept a person onto the guardianship and conservatorship assistance program. A request for reconsideration must be supported by the referring acute care hospital submission of supplemental documentation to support the person's eligibility. An acute care hospital does not have a right to an administrative hearing to contest any department decision made under this chapter.

NEW SECTION

WAC 388-106-2130 Notice of department decisions. DSHS will provide an applicant or participant in the program, and their guardian or conservator as applicable, with written notice about department decisions about eligibility for acceptance onto, or continuation on, the program.

NEW SECTION

WAC 388-106-2135 Appeal of acceptance determination or discontinuation of program participation. The person who is the subject of a referral for acceptance into or a recipient of services under the guardianship and conservatorship assistance program may request an administrative hearing to contest a department decision that they are not eligible for acceptance or continuation in the program. The person does not have a right to a hearing to contest the adequacy of the services, costs covered, or the amounts paid to the contracted guardian or conservator.

NEW SECTION

WAC 388-106-2140 Overpayment. If DSHS or the guardian or conservator discovers that the person's estate has available and adequate resources to pay for guardianship fees or costs, the payments made under this program on behalf of the client are overpayments to the extent a court determines that the person's estate is able to pay for guardianship fees and costs paid for by the state funded guardianship and conservatorship assistance program.

NEW SECTION

WAC 388-106-2145 Program hold and reinstatement or forfeiture of program participation. If a client ceases to remain financially eligible as required by WAC 182-513-1315 (1)-(3) while occupying a program slot, their program slot can be held for up to a maximum of 90 days from the date it is discovered the client is overresourced. This process is referred to as a "program hold". In the event that a client becomes financially reeligible for LTSS medicaid as outlined in WAC 182-513-1315 (1)-(3) within the designated 90-day hold period, they will be reinstated to their program slot for the remaining portion of the originally approved tier slot term; however, if at the end of the designated 90-day hold period, the client continues to be financially ineligible for the program, DSHS terminates their eligibility for the program.

NEW SECTION

WAC 388-106-2150 Estate recovery. Services provided under this program are exempt from estate recovery as outlined in WAC 182-527-2742.

NEW SECTION

WAC 388-106-2155 Exception to rule (ETR). Services provided under this program are exempt from the exception to rule process in WAC 388-440-0001.

NEW SECTION

WAC 388-106-2160 Personal needs allowance increase or participation reduction. Services provided under this program are paid by state only funds. While DSHS is paying for services under this contract for a client, there will be no reduction in the amount a client must pay towards client responsibility to account for costs and fees associated with establishing and maintaining guardianship or conservatorship as outlined in WAC 182-513-1380 and 388-79A-005.

NEW SECTION

WAC 388-106-2165 Split appointment. This program only pays for guardianship and conservatorship services of one contractor per case. In the event that the court orders a split appointment amongst multiple contracted providers, DSHS will only pay the guardian.

WSR 24-12-060
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed June 3, 2024, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-072.

Title of Rule and Other Identifying Information: Chapter 16-240 WAC, WSDA grain inspection program——Definitions, standards, and fees. The department of agriculture (department) is proposing to amend this chapter by increasing some of the program fees, revising some of the fee structures to more accurately reflect the scope of services provided including, but not limited to, adding fees for services that are not specifically identified, and to clarify language to ease in the understanding of the rule.

Hearing Location(s): On July 10, 2024, at 1:00 p.m., Microsoft Teams https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjBjYTBlYWItZWYzMy00MjMzLWE2N2YtNWNlY2FkZWQzNDBj%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d, Meeting ID 268 930 763 834, Passcode EifWcn; dial in by phone +1 564-999-2000, 945092871# United States, Olympia.

Date of Intended Adoption: July 17, 2024.

Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by July 10, 2024.

Assistance for Persons with Disabilities: Contact Rachel Furth, phone 360-764-9931, TTY 800-833-6388, email rfurth@agr.wa.gov, by July 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following amendments:

Adding or increasing the following fees:

- Adding an emergency tier and an automated emergency tier rate for export vessels.
- Increasing the hourly rate for export operations to $75.00 per hour and increasing the overtime rate to $37.50 per hour. The department is also adding a noncontract rate of $150.00 per hour and a noncontract overtime rate of $75.00 per hour.
- Stowage exams on export vessels will be at $650.00 per inspection.
- Mycotoxin tests will increase to $50.00 per test.
- Barge sample only inspections will be $0.15 per metric ton.
- In, out, or local will be increased to $0.30 per metric ton.
- Weight only will be increased to $0.25 per metric ton.
- Class Y weighing will increase to $2.00 per railcar.
- Stress crack analysis in corn will be charged at one half hour per inspection.
- Service cancellation fee will be $300.00 per employee for canceled shift.

Clarifying the following language:

- Adding language to WAC 16-240-043 that will initiate the emergency tier.
- Implementing a permanent contract and removing the permanent staffing request language in WAC 16-240-036.

- Striking language and adding language in WAC 16-240-038 for the emergency tier.
- Replacing staffing requests to permanent contract under WAC 16-240-048.
- Adding language to WAC 16-240-060 to clarify what services are charged under what fee type.
- Adding and removing language to WAC 16-240-020 for clarification.

Reasons Supporting Proposal: RCW 22.09.790 requires the department to fix fees for inspection, grading, and weighing of the commodities that are sufficient to cover the cost of services it provides. Based on a recent budget review, it was determined that the current fees are not able to sustain program services, resulting in consistent monthly revenue loss. Since the program has been operating with a fund balance that is below a six-month operating reserve, continuing to perform services at the current fee schedule will result in the program not being able to meet the needs of stakeholders. If a fee increase is not initiated, the program will be in a negative fund balance within the next fiscal year and as a fee for service program, the grain program is prohibited from operating with a negative fund balance.

Increasing program fees, revising the current fee structure to more accurately reflect the scope of services provided including, but not limited to, adding fees for services that are not specifically identified, and clarifying language to ease in the understanding of the rule will enable the program to maintain financial stability while continuing to provide services described and provided for in chapter 22.09 RCW and will provide clarity on confusing language already present in the rule.

Statutory Authority for Adoption: RCW 22.90.020 and 22.09.790.

Statute Being Implemented: Chapter 22.09 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Rachel Furth, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1997; Implementation and Enforcement: Philip Garcia, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1921.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

June 3, 2024
Jessica Allenton
Assistant Director

OTS-5469.1

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-020 Washington state grain and commodity service points. The offices located in the following cities are service points for providing sampling, inspecting, weighing, and certification services.

(1) Service points:

(a) Colfax.

(b) Kalama (North).

(c) Kalama (South).

(d) Longview.

(e) Olympia.

(f) ((~~Othello.~~

~~(g) Pasco.~~

~~(h)~~)) Quincy.

((~~(i)~~)) (g) Seattle.

((~~(j)~~)) (h) Spokane.

((~~(k)~~)) (i) Tacoma.

((~~(l)~~)) (j) Vancouver.

(2) Aberdeen has been delegated to Washington state as a service point by the Federal Grain Inspection Service. Services for Aberdeen are as follows:

(a) Services for Aberdeen may be requested through the Tacoma grain inspection office.

(b) Travel time and mileage will be charged from Tacoma to Aberdeen for all services requested at Aberdeen until a permanent staff is established.

(3) Inspection points may be added or deleted within the department's delegated and designated service area.

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-036 Permanent contract staffing ((~~requests~~)). An applicant may request the department to establish permanent staffing on shifts ((~~as shown below~~)) using the application issued by the department:

(1) Requests for permanent staffing ((~~of day, night, swing, or graveyard shifts must be made in writing at least seven business days prior to the shift(s) that are requested~~)) must be submitted to the department by July 5th for permanent staffing to be established that year. For FY 2025, the department will accept requests until September 5, 2024.

(a) Requests for permanent contract staffing of any night, swing or graveyard shift will be deemed to include a request for permanent contract staffing of the day shift.

(b) The requested shift(s) will be established if the department has an adequate number of trained personnel and the applicant and the department execute a permanent contract.

((~~(c) Confirmation of staffing requirements must be received by the inspection office by 2:00 p.m. each business day for the next service day, including requests for weekend days, for Mondays, or for holidays, which must be requested by 2:00 p.m. on the last business day of the week (see WAC 16-240-034).~~

~~(d) Failure to meet the notification requirement may result in denial of service.~~))

(2) When the department is able to staff the permanent night, swing, or graveyard shift(s) requested by the applicant, the overtime rate established under WAC 16-240-048 will be waived for the requested shift(s). Permanent staffing contracts will establish the billing structure for permanent staffing.

(3) ((~~Once established, permanent shifts will continue until canceled by the requesting party or canceled by the department for good cause~~)) Permanent staffing contracts lapse one year from the date that service is to commence under the agreement unless the contract is properly renewed by the applicant by sufficient written notice consistent with the terms of the permanent staffing contract.

(a) ((~~Cancellation~~)) Termination requests must be received, in writing, ((~~giving~~)) at least ((~~fifteen business days' notice~~)) 60 days before the termination may be effective, unless the parties mutually agree to an earlier termination date.

(b) Applicants will be charged for any shifts established ((~~at their request until the cancellation~~)) in the permanent staffing contract until the termination notice period has expired.

AMENDATORY SECTION (Amending WSR 22-23-008, filed 11/3/22, effective 12/4/22)

WAC 16-240-038 Revenue minimum determination. The circumstances under which the department adjusts rates to meet the revenue minimum are as follows:

(1) When the daily volume of work at a service location at the established fees does not generate revenue at least equal to the straight time hourly rate per hour, per employee, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum, except as provided in subsection (2) of this section.

(2) The daily revenue minimum charge applies only to the Tier 1 ((~~and~~)), Tier 2, and emergency tier metric tonnage rate shown in WAC 16-240-070 (2)(b) at USGSA Table 1 and in WAC 16-240-080 (2)(b) at AMA Table 1. When the Tier 3 rate is in effect (WAC 16-240-043, 16-240-070, and 16-240-080), export locations will not be subject to daily revenue minimum charges during the Tier 3 rate period allowed under WAC 16-240-043.

(3) Work volume daily averaging at export locations will be determined as follows:

(a) When the daily volume of work at a service location at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, the department will charge an additional fee, except as provided in subsection (2) of this section.

(b) The straight time hourly rate will be charged per hour, per employee.

(c) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under daily averaging.

(4) Work volume monthly averaging at export locations will be determined as follows:

(a) When the applicant has requested the department to establish one or more permanent shifts, the applicant may request, in writing, that the revenue minimum required for staffing at the location be determined based on the completed invoices for the calendar month, instead of paying the fees for daily volume of work.

(b) Under this subsection (4), and except for when the work volume monthly averaging for the revenue minimum is determined under (a) of this subsection, when the monthly volume of work at the established fees does not generate revenue equivalent to the contract/noncontract straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, a sufficient additional amount, calculated by using the contract/noncontract straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum for each month during which work volume monthly averaging applies. As provided under ((~~(f)~~)) (e) of this subsection, this revenue minimum adjustment applies only during any month when Tier 1 ((~~and~~)), Tier 2, and emergency tier rates are in effect.

(c) At export locations, the request for monthly averaging stays in effect until canceled.

(d) ((~~An applicant's written request to establish or cancel monthly averaging for the coming month must be received by 2:00 p.m. of the last business day in the month.~~

~~(e)~~)) Service cancellation fees under WAC 16-240-054 are not considered to be revenue under monthly averaging.

((~~(f)~~)) (e) The monthly revenue minimum charge applies only to the Tier 1 ((~~and~~)), Tier 2, and emergency tier rate shown in USGSA Table 1 under WAC 16-240-070 (2)(b) and AMA Table 1 under WAC 16-240-080 (2)(b) of this schedule. When the Tier 3 rate is in effect, export locations will not be subject to daily revenue minimum charges during the Tier 3 rate period allowed under WAC 16-240-043.

((~~(i) Upon the applicant's written notification to the department, the monthly revenue minimum will not be applied to the month in which an export facility resumes operations after an extended downtime. This exception for maintenance or repair is available once per fiscal year.~~

~~(ii)~~)) When the department provides services at a nonexport location or a transloading facility, and the hourly, unit, and applicable travel fees do not cover the cost of providing the service, a sufficient additional amount calculated by using the travel straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-043 Minimum operating fund balance fee adjustment. The department shall establish the minimum operating fund balance amount on the first business day of July each year.

(1) At the time the minimum operating fund balance amount is established, if the fund balance is above the new minimum operating fund balance amount by at least ((~~ten~~)) 10 percent, the metric ton vessel rate and the approved automated weighing system rate per metric ton under WAC 16-240-070 (2)(b) at USGSA Table 1 shall be the next lower tier rate beginning August 1st of that year, and the metric ton vessel

rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 (2)(b) at AMA Table 1 shall be the next lower tier rate beginning August 1st of that year.

(2) At the time the minimum operating fund balance amount is established, if the fund balance is below the new minimum operating fund balance by at least ((~~ten~~)) 10 percent, the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-070 (2)(b) at USGSA Table 1 shall be the next higher tier rate beginning August 1st of that year, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 (2)(b) at AMA Table 1 shall be the next higher tier rate beginning August 1st of that year.

(3) If after three months at the Tier 2 rate the fund balance is not reduced to or projected by the department to achieve reduction to the minimum operating fund balance within the following six months, the metric ton vessel rate and approved automated weighing system rate per metric ton under WAC 16-240-070 (2)(b) at USGSA Table 1 shall be the Tier 3 rate beginning the first day of the following month, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 (2)(b) at AMA Table 1 shall be the Tier 3 rate beginning the first day of the following month.

(4) In the event that the fund balance drops below one-half of the determined six-month operating fund balance any time during the fiscal year, the Emergency Tier (EM) and Automated Emergency Tier (AEM) will be implemented the 1st of the following month. When the fund balance returns to the determined six-month operating fund balance, Tier 2 will be implemented on the first of the following month.

(5) The department may review the status of the minimum operating fund balance any month during each fiscal year. On the first business day of the month following such review, if the fund balance is above the minimum operating balance by at least ((~~ten~~)) 10 percent, the next lower tier rate under this section shall apply. If the fund balance is below the minimum operating fund balance by at least ((~~ten~~)) 10 percent, the next higher tier rate under this section shall apply. Any change in the rates required under this subsection shall take effect beginning the first day of the following month. The department shall give notice of any rate change as provided under subsection ((~~(5)~~)) (6) of this section.

((~~(5)~~)) (6) The department shall post notice of each year's current minimum operating fund balance amount on the department's ((~~WSDAgrades.com~~)) website within three business days of the date in July when that amount is established under this section.

((~~(6)~~)) (7) The department shall post notice of the rates established under subsections (1) through ((~~(4)~~)) (5) of this section on the department's ((~~WSDAgrades.com~~)) website within three business days of the date the department determines the rates. The posted notice shall identify the rate for each affected category of service and the date each rate takes effect. Notice is not required to be posted when an established rate does not change following review under this section.

((~~(7)~~)) (8) By email or other means, the department may provide optional additional notice to current customers and to any other interested persons of the minimum operating fund balance established under this section and notice of any rates established or changed under subsections (1) through ((~~(4)~~)) (5) of this section. Such optional additional notice should be given within the same times as the required notices under subsections ((~~(5)~~)) (6) and ((~~(6)~~)) (7) of this section.

This subsection ((~~(7)~~)) (8) shall not affect the validity of any rates established or changed under this section.

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-048 Rates for working outside established business hours (overtime). In addition to regular inspection and weighing fees and any applicable hourly rate, the department will charge the overtime rate per hour, per employee, including applicable supervisory and clerical employee hours, when a service is requested:

(1) Anytime on Saturdays, Sundays, or holidays.

(2) Before or after regularly scheduled office hours, Monday through Friday, except as provided in WAC 16-240-036 for an established permanent staffing ((~~request~~)) contract.

(3) During established meal periods on any shift.

(4) For services requested at unstaffed export locations.

(5) Overtime is charged in one-half hour increments.

AMENDATORY SECTION (Amending WSR 22-05-011, filed 2/4/22, effective 3/7/22)

WAC 16-240-060 WSDA grain program hourly rates, fees and cancellation fees. USGSA—AMA—WSDA Table 1 contains fees for USDA, AMS, FGIS scale authorization, contract straight-time hourly rate, noncontract hourly rate, contract overtime hourly rate, noncontract overtime hourly rate, travel hourly rate, and service cancellation fees for services performed under the United States Grain Standards Act, the Agricultural Marketing Act of 1946, and Washington state rule.

USGSA—AMA—WSDA Table 1
WSDA Grain Program Hourly Rates, Fees and Cancellation Fees

1.	Scale authorization/travel time fee, **per hour, per employee**	**$56.00**
2.	Straight-time rate/contract rate, **per hour, per employee**	((**~~$56.00~~**)) **$75.00**
3.	Overtime rate/contract overtime rate established under WAC 16-240-048, **per hour, per employee**	((**~~$28.00~~**)) **$37.50**
4.	Noncontract rate, **per hour, per employee**	**$150.00**
5.	Noncontract overtime rate, **per hour, per employee**	**$75.00**
6.	Service cancellation fee, **per employee**	((**~~$200.00~~**)) **$300.00**

AMENDATORY SECTION (Amending WSR 22-23-008, filed 11/3/22, effective 12/4/22)

WAC 16-240-070 Fees for services under the United States Grain Standards Act. (1) USGSA Tables 1 through (8) in this section contain fees for official sampling, inspection, weighing services, and fees for other associated services under the United States Grain Standards Act (USGSA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the United States Grain Standards Act are described below.

(a) Fees for other services under the United States Grain Standards Act not specifically cited in WAC 16-240-070 are provided at the rates contained in WAC 16-240-080 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis. The program will require the applicant for service to provide advance consent to the rate for any service necessary to be performed at an external laboratory or organization.

(b) An applicant may be required to provide the necessary supplies and equipment when requesting a new or special type of analysis.

USGSA Table 1
Fees for Combination Inspection and Weighing Services

1.	In, out, or local, **rate for all tiers, per metric ton**	((~~**$0.250**~~)) **$0.300**
2.	Vessels (export and domestic ocean-going), **Tier 1 rate, per metric ton**	**$0.300**
3.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, **Tier 1 rate, per metric ton**	**$0.280**
Note: For automated weighing systems:		
■	When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060.	
4.	Vessels and local (export and domestic ocean-going), **Tier 2 rate, per metric ton**	**$0.250**
5.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, **Tier 2 rate, per metric ton**	**$0.230**
6.	Vessels and local (export and domestic ocean-going), **Tier 3 rate, per metric ton**	**$0.100**
7.	Vessels (export and domestic ocean-going), **Emergency Tier rate, per metric ton**	**$0.400**
8.	Vessels (export and domestic ocean-going) with approved automated weighing system, **Automated Emergency Tier rate, per metric ton**	**$0.380**

9.	Official ship samples	**$7.00**
Note: For vessels (export and domestic ocean-going): ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee. ■ Stress crack analysis in corn ((~~is included in the fees in USGSA Table 1~~)) will be charged one-half hour per inspection. ■ During vessel loading, fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be charged at the per unit rates included under this chapter.		
((~~8.~~)) 10.	Trucks or containers, **per truck or container**	**$35.00**
((~~9.~~)) 11.	Additional nongrade determining factor analysis, **per factor**	**$3.00**

USGSA Table 2
Fees for Official Sampling and Inspection Without Weighing Services

1.	Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, **per truck or container**	**$30.00**
2.	Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, **per metric ton**	((**~~$0.10~~**)) **$0.150**
3.	Railcars sampled by USDA approved mechanical sampler, including factor only or sampling only services, **per railcar**	**$20.00**
4.	Original or new sample reinspection railcars sampled by USDA approved grain probe, applicant assisted, including factor only or sampling only services, **per railcar**	**$20.00**
5.	Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, **per railcar**	**$40.00**
Note: The following applies to all fees in this table: ■ For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 2. ■ Stress crack analysis in corn ((~~is included in the fees in USGSA Table 2~~)) will be charged one-half hour per inspection. ■ Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter.		

■	The per railcar rate applies to each railcar included in a batch grade. A batch grade is two or more cars that are combined, at the applicant's request, for a single grade.	
■	FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).	
6.	Inspection of bagged grain, including tote bags, per hundredweight (cwt)	**$0.140**
7.	Additional nongrade determining factor analysis, **per factor**	**$5.00**

USGSA Table 3
Fees for Official Class X Weighing Services Without an Inspection of Bulk Grain

1.	In, out, or local, **per metric ton**	((~~**$0.200**~~)) **$0.250**
2.	Vessels (export and domestic ocean-going), **per metric ton**	((~~**$0.200**~~)) **$0.250**
3.	Trucks or containers, **per weight lot**	**$20.00**
4.	Class Y weighing per railcar	((~~**$1.00**~~)) **$2.00**
■	FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).	

USGSA Table 4
Fees for Inspection of Submitted Samples, Fees for Reinspections Based on Official File Samples and Fees for Additional Factors

1.	Submitted samples, including factor-only inspections, **per inspection**	**$15.00**
2.	Reinspections based on official file sample, including factor-only reinspections, **per inspection**	**$15.00**
3.	Warehousemen samples	**$15.00**
4.	Warehousemen reinspection	**$15.00**
5.	Additional, nongrade determining factor analysis, **per factor**	**$5.00**
6.	Stress crack only analysis on corn, **per sample**	**$9.00**
Note: The following applies to all fees in this table:		
■	When submitted samples are not of sufficient size to allow for official grade analysis, obtainable factors may be provided, upon request of the applicant, at the submitted sample rates shown above.	
■	For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 4.	
■	Stress crack analysis in corn is included in the fees in USGSA Table 4.	
■	Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter.	

■ FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).

USGSA Table 5
Fees for Miscellaneous Services

1.	Laboratory analysis, **at cost**	**At cost**
2.	All other USGSA services not listed in this section, **per hour, per employee**	((~~**$56.00**~~)) **$75.00**
Note: The following applies to all fees in this table:		
■	On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department.	
■	FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).	

USGSA Table 6
Fees for Official Analysis for Protein, Oil, or Other Official Constituents

Original or reinspection based on file sample, **per test**	**$9.00**
Note: The following applies to the fee in USGSA Table 6:	
■ When a reinspection service includes a request for a new sample, the appropriate sampling fee will also be charged.	
■ Results for multiple criteria achieved in a single testing operation are provided at the single test rate unless certificated separately.	
■ FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).	

USGSA Table 7
Fees for Testing for the Presence of Mycotoxins Using USDA Approved Methods

Original, reinspection based on official file sample, or submitted sample, **per test**	((~~**$40.00**~~)) **$50.00**
Note: The following applies to this table:	
■ When a reinspection service includes a request for a new sample, the appropriate sampling fee to obtain the sample will be charged in addition to the per test fee shown earlier (see WAC 16-240-070, USGSA Table 2).	
■ FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).	

USGSA Table 8
Fees for Stowage Examination Services on Vessels or Ocean-Going Barges and Fees for Other Stowage Examination Services

1.	Vessels or ocean-going barges stowage examination, original or reinspection, **per request**	((~~**$500.00**~~)) **$650.00**
2.	Other stowage examinations of railcars, trucks, trailers, or containers, original or reinspection, **per inspection**	**$9.00**

AMENDATORY SECTION (Amending WSR 22-23-008, filed 11/3/22, effective 12/4/22)

WAC 16-240-080 Fees for services under the Agricultural Marketing Act of 1946. (1) AMA Tables 1 through 5 in this section contain official sampling, inspection, or weighing services and fees for other services under the Agricultural Marketing Act of 1946 (AMA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the Agricultural Marketing Act of 1946 are described below.

(a) Fees for other services under the Agricultural Marketing Act of 1946 not contained in WAC 16-240-080 are contained in WAC 16-240-070 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis.

(b) An applicant may be required to provide the necessary supplies or equipment when requesting a new or special type of analysis.

AMA Table 1
Fees for Combination Sampling, Inspection and Weighing Services, and Additional Factors

1.	In, out, or local, **rate for all tiers, per metric ton**	((~~**$0.250**~~)) **$0.300**
2.	Vessels (export or domestic), **Tier 1 rate, per metric ton**	**$0.300**
3.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, **Tier 1 rate, per metric ton**	**$0.280**
Note: For automated weighing systems:		
■	When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060.	
4.	Vessels and local (export and domestic ocean-going), **Tier 2 rate, per metric ton**	**$0.250**
5.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, **Tier 2 rate, per metric ton**	**$0.230**
6.	Vessels and local (export and domestic ocean-going), **Tier 3 rate, per metric ton**	**$0.100**
7.	Vessels (export and domestic ocean-going), **Emergency Tier rate, per metric ton**	**$0.400**
8.	Vessels (export and domestic ocean-going) with approved automated weighing system, **Automated Emergency Tier rate, per metric ton**	**$0.380**
9.	Official ship samples	**$7.00**
Note: For vessels (export and domestic ocean-going):		

	■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee. ■ During vessel loading, fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be charged at the per unit rates included under this chapter.	
((~~8.~~)) 10.	Trucks or containers, **per truck or container**	**$30.00**
((~~9.~~)) 11.	Additional, nongrade determining factor analysis, **per factor**	**$3.00**
Note: The following applies to all fees in this table: ■ The rates in the above section also apply to services provided under federal criteria inspection instructions, state established standards, or other applicant requested criteria. ■ Dockage breakdown is included in the basic inspection fee. ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee. ■ Fees for other tests, such as mycotoxin analysis, provided during vessel loading will be charged at the per unit rates included in this fee schedule.		

AMA Table 2
Fees for Official Sampling and Inspection Without Weighing Services, and Additional Factors

1.	Trucks or containers sampled by USDA approved grain probe, including factor only or sampling only services, **per truck or container**	**$30.00**
2.	Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, **per metric ton**	((**~~$0.10~~**)) **$0.150**
3.	Railcars sampled by USDA approved mechanical samplers, including factor only or sampling only services, **per railcar**	**$30.00**
4.	Railcars sampled by USDA approved grain probe, including factor only or sampling only services, **per railcar**	**$40.00**
5.	Inspection of bagged commodities or tote bags, including factor only or sampling only services, **per hundredweight (cwt)**	**$0.140**
6.	Additional, nongrade determining factor analysis, **per factor**	**$5.00**
Note: The following applies to all fees in this table: ■ Dockage breakdown is included in the basic inspection fee.		

■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate. ■ The rates shown above also apply to services provided under federal criteria inspection instructions.

AMA Table 3
Fees for Official Weighing Services without Inspections

1.	In, out, or local, **per metric ton**	((~~**$0.200**~~)) **$0.250**
2.	Vessels (export and domestic ocean-going), **per metric ton**	((~~**$0.200**~~)) **$0.250**
3.	Trucks or containers, **per weight lot**	**$20.00**

AMA Table 4
Fees for Inspecting Submitted Samples

1.	Submitted sample, thresher run or processed, including factor-only inspections, **per sample**	**$24.00**
2.	Additional, nongrade determining factor analysis, **per factor**	**$5.00**
Note: The following applies to all fees in this table: ■ Dockage breakdown is included in the basic inspection fee. ■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate. ■ The rates shown above also apply to inspection services provided under federal criteria inspection instructions. ■ When the size of a submitted sample is insufficient to perform official grade analysis, factor-only analysis is available on request of the applicant.		

AMA Table 5
Fees for Miscellaneous Services

1.	Falling number determinations, including liquefaction number on request, **per determination**	**$20.00**
2.	Sampling and handling of processed commodities, **per hour, per employee**	**$56.00**
3.	Laboratory analysis, **at cost**	**At cost**
Note: The following applies to all fees in this table: ■ On request, shipping arrangements billed directly **by shipper** to the customer's shipping account may be coordinated by the department.		

WSR 24-12-077
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed June 4, 2024, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-034.

Title of Rule and Other Identifying Information: Music therapists; the department of health (department) is proposing new chapter 246-837 WAC, Music therapists, to implement SHB 1247 (chapter 175, Laws of 2023), which created the music therapist profession. The department is proposing to establish the education and training, examination and licensure requirements, continuing education, and fees. The proposed rules also implement other recently enacted legislation.

Hearing Location(s): On July 11, 2024, at 11:00 a.m., at the Department of Health, 111 Israel Road, Room 163, Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_Uw3QJ57RSXCXi6O05QYihg. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: July 18, 2024.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, email music.therapist@doh.wa.gov, fax 360-236-290 [2901], https://fortress.wa/doh/policyreview, beginning on the date and time of this filing, by midnight on July 11, 2024.

Assistance for Persons with Disabilities: Contact Kendra Pitzler, phone 360-236-4723, fax 360-236-2901, TTY 360-833-6388 or 711, email music.therapist@doh.wa.gov, by July 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement SHB 1247, which created music therapists as a new profession in the state of Washington. The department is proposing rules to establish the new profession's education and training, examination, and licensure requirements. The proposed rules also establish practice standards and fees to regulate this license. The proposed rules also implement other recently enacted legislation.

Reasons Supporting Proposal: The department proposes these rules to align with the legislative intent of SHB 1247, ESSB 5229 (chapter 276, Laws of 2021) that requires health equity continuing education, and 2SHB 1724 (chapter 425, Laws of 2023) that waives requirements for certain out-of-state applicants. The proposed rules also align with chapter 18.130 RCW, the Uniform Disciplinary Act for regulation of health professionals. The proposed rules establish enforceable credentialing requirements that will enhance and protect safety by having qualified music therapists licensed in Washington state.

Statutory Authority for Adoption: RCW 18.122.050, 18.130.077, 18.233.060, 18.233.070, 43.70.250, and 43.70.613.

Statute Being Implemented: SHB 1247 (chapter 175, Laws of 2023) codified as chapter 18.233 RCW; ESSB 5229 (chapter 276, Laws of 2021); 2SHB 1724 (chapter 425, Laws of 2023); and chapter 18.130 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kendra Pitzler, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4723.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4723, fax 360-236-2901, TTY 711, email music.therapist@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

June 4, 2024
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5449.1

Chapter 246-837 WAC
MUSIC THERAPIST

NEW SECTION

WAC 246-837-010 Music therapist—Definitions. The definitions in this section apply throughout this chapter unless the context clearly states otherwise.

(1) "AMTA" means American Music Therapy Association.

(2) "CBMT" means the Certification Board for Music Therapists.

(3) "Department" means the Washington state department of health.

(4) "MT-BC" means Music Therapy Board Certification.

(5) "Music therapist" means a person licensed to practice music therapy under chapter 18.233 RCW.

(6) "Music therapy" has the same meaning as provided in RCW 18.233.010.

(7) "Secretary" means the secretary of the Washington state department of health.

NEW SECTION

WAC 246-837-020 Music therapist—Approved courses of instruction. (1) The department recognizes and approves courses of instruction in music therapy by schools that have obtained accreditation of the program in music therapy from the AMTA.

(2) The department may approve other academic and clinical training programs for music therapy that are approved by other organizations that meet the following criteria:

(a) Is an organization whose business is specific to music therapy;

(b) Requires schools and universities that offer music therapy programs to be accredited by an accrediting agency that is recognized by the United States Department of Education or the Council for Higher Education Accreditation;

(c) Requires music therapy programs to be based on a bachelor's degree or above;

(d) Requires music therapy programs to be based on relevant competencies for music therapy; and

(e) Requires music therapy programs to have a clinical training component that includes a minimum of 1,200 hours with at least 900 hours in internship experiences approved by the institution, the AMTA, or any department-approved organization.

NEW SECTION

WAC 246-837-030 Music therapist—Approved examination. (1) The department recognizes and approves the examination offered by the CBMT.

(2) The department may approve other examinations for music therapy that are approved by an organization that meet the following criteria:

(a) Is an organization based in the United States whose business is specific to music therapy and who issues certifications in music therapy;

(b) Has current accreditation by the American National Standards Institute (ANSI) or the National Commission for Certifying Agencies (NCCA); and

(c) Bases the examination on relevant competencies for music therapy.

NEW SECTION

WAC 246-837-050 Music therapist—Application. (1) An applicant for a music therapist license shall meet the requirements in WAC 246-12-020.

(2) Applicants must submit the following supporting documentation:

(a) An official transcript provided as evidence of successful completion of education and training requirements in WAC 246-837-020;

(b) Verification of successful completion of the examination required in WAC 246-837-030 sent directly to the department by the CBMT or other approved organization;

(c) Fingerprint cards for national fingerprint-based background check pursuant to RCW 18.130.064(2), if requested by the department;

(d) Verification of licenses held in other states; and

(e) Any additional documentation or information requested by the department.

(3) Verification of the education, training, and examination requirements in subsection (2)(a) and (b) of this section are waived for an applicant who meets the requirements of RCW 18.130.077. The MT-BC

certification issued by the CBMT is approved for this waiver. An applicant for waiver must submit proof directly from any state where the license holds a health care credential that the applicant has not been subject to disciplinary action or impairment in the two years preceding application and is not under investigation or subject to charges. In addition, the applicant must submit:

(a) Verification sent to the department from a state with substantially equivalent requirements that the applicant has held an active credential in that state for at least two years immediately preceding this application with no interruption in licensure that lasted longer than 90 days; or

(b) Verification that the applicant holds a current MT-BC certification issued by the CBMT.

NEW SECTION

WAC 246-837-060 Continuing education requirements for a music therapist. Every two years upon renewal, a music therapist must attest to completing the continuing education (CE) requirements in subsection (1) or (2) of this section.

(1) The department will accept the following as proof of meeting continuing education:

(a) A current MT-BC certification issued by the CBMT or another national certification board approved by the secretary that requires CE as part of certification; and

(b) Two hours of health equity continuing education credits as described in subsection (4) of this section.

(2) A music therapist who does not hold a current certification as described in subsection (1) of this section shall complete a minimum of 40 hours of CE related to the practice of music therapy.

(a) A minimum of 33 hours of activities must directly address music therapist skill development or music therapist clinical practice, as described in subsection (3) of this section.

(b) At least one hour must pertain to professional ethics and boundaries of a music therapist.

(c) At least two hours must be in health equity as described in subsection (4) of this section.

(d) No more than six hours may be in professional development activities that enhance the licensee's business practice as a music therapist. If audited, the credential holder must submit a certificate of completion or other proof of completion and documentation showing how this relates to their music therapy practice.

(e) Fifty minutes of CE contact time or direct instruction is equivalent to one CE hour.

(3) CE hours may be obtained through one or more of the following:

(a) Courses from a college or university accredited by the United States Department of Education may meet all the required CE hours.

(i) One academic semester credit is equivalent to 15 CE hours.

(ii) One academic quarter credit is equivalent to 10 CE hours.

(iii) Audit requirement is a course syllabus and transcript from the college or university.

(b) Courses from a CE provider.

(i) Courses from providers approved by the CBMT or a national certification board affiliated with music therapy approved by the secretary may meet all of the required CE hours.

(ii) Courses from providers not approved by a national certification board affiliated with music therapy may meet no more than six CE hours.

(iii) Audit requirement is a certificate of completion or letter from a CE provider that includes the course topic and CE hours completed.

(c) Licensee-led instruction of a CE course.

(i) College or university instruction may meet no more than 16 CE hours.

(ii) Any other type of instruction may meet no more than eight CE hours.

(iii) Repeated instruction in the same course may only qualify for CE credit one time in a single CE reporting period.

(iv) Instruction must be related to music therapy.

(v) Audit requirement is the title, description, and dates of course of instruction on a letter from the academic institution or education provider.

(d) Attendance at AMTA National and Regional Conference.

(i) Audit requirement for a full conference is the Certificate of Attendance.

(ii) Audit requirement for individual sessions is signed verification of attendance.

(e) Supervision of practicum student for five hours credit per student or an intern for 10 hours credit per student. Audit requirement is written verification from the music therapy university or facility coordinator.

(f) Develop a new AMTA Academic Program for 100 hours credit per academic program. Audit requirement is a letter of program approval from the AMTA.

(g) Establish a music therapy internship for 30 hours credit per university affiliated program or 50 hours credit per program that is on the AMTA national roster of internship programs. Audit requirement is written verification from the university or AMTA approval letter.

(4) A music therapist must complete two hours of health equity continuing education training every four years as described in WAC 246-12-800 through 246-12-830.

(5) A music therapist shall comply with the requirements of WAC 246-12-170 through 246-12-240.

NEW SECTION

WAC 246-837-070 Expired license—Return to active status. (1) A person holding an expired music therapist license may not practice until the license is returned to active status.

(2) If the music therapist license has expired for less than five years, they shall meet the requirements of WAC 246-12-040.

(3) If the music therapist license has been expired for five years or more, and they have a current MT-BC certification or currently practice as a licensed music therapist in another state that has substantially equivalent requirements, the applicant shall meet the requirements of WAC 246-12-040 and:

(a) Provide verification of a current MT-BC certification issued by the CBMT; or

(b) Provide verification of a current unrestricted active music therapist license in another state or U.S. jurisdiction which is substantially equivalent to the qualifications for the credential in the state of Washington.

(4) If a music therapist license has been expired for five years or more and the person does not meet the requirements of subsection (3) of this section, the applicant shall comply with WAC 246-12-040 and demonstrate competence by successfully passing an examination as identified in WAC 246-837-030 within six months prior to reapplying for the license.

NEW SECTION

WAC 246-837-080 Inactive status. A music therapist may obtain an inactive credential as described in WAC 246-12-090 through 246-12-110.

NEW SECTION

WAC 246-837-100 Mandatory reporting. All individuals credentialed under this chapter must comply with the mandatory reporting rules in chapter 246-16 WAC.

NEW SECTION

WAC 246-837-110 Sexual misconduct. All individuals credentialed under this chapter must comply with the sexual misconduct rule in chapter 246-16 WAC.

NEW SECTION

WAC 246-837-990 Music therapist fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application-Original license	$300.00
License renewal	
Renewal	680.00
Late renewal penalty	170.00
Expired license reissuance	170.00
Duplicate license	10.00
Verification of license	25.00

WSR 24-12-082
PROPOSED RULES
POLLUTION LIABILITY
INSURANCE AGENCY
[Filed June 4, 2024, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-072.

Title of Rule and Other Identifying Information: Chapter 374-10 WAC, State financial assurance program, a rule establishing the state financial assurance program (program) for owners and operators of petroleum underground storage tanks (UST).

Hearing Location(s): On Wednesday, July 10, 2024, at 5:00 - 6:30 p.m.; on Friday, July 12, 2024, at 12:00 - 1:30 p.m.; and on Wednesday, July 17, 2024, at 10:00 - 11:30 a.m., virtual Zoom sessions. Please submit written comments to rule@plia.wa.gov. See https://plia.wa.gov/public for more details and links to the Zoom sessions.

Date of Intended Adoption: August 12, 2024.

Submit Written Comments to: Phi V. Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, 800-822-3905, beginning 8:00 a.m., June 20, 2024, by 5:00 p.m., July 19, 2024.

Assistance for Persons with Disabilities: Contact Xyzlinda Marshall, phone 360-407-0515, TTY 711 or 800-833-6388, email rules@plia.wa.gov, beginning 8:00 a.m., June 20, 2024, by 5:00 p.m., July 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state pollution liability insurance agency (PLIA) provides an effective and efficient government funding model to support owners and operators in meeting financial responsibility and environmental cleanup requirements for USTs.

As authorized by chapter 70A.545 RCW, the purpose of this chapter is to establish criteria and procedures for the payment of costs from the program to remediate contamination caused by releases from petroleum USTs. Remediation efforts are managed and directed by PLIA to ensure that all petroleum cleanup meet the substantive requirements of the Model Toxics Control Act, chapter 70A.305 RCW and chapter 173-340 WAC. The rule establishes program eligibility and coverage limitations for owners or operators of commercial petroleum UST systems seeking an alternative financial responsibility mechanism. This program does not change any existing rules found in Title 374 WAC.

Reasons Supporting Proposal: The program provides owners and operators of petroleum USTs with a financial responsibility mechanism that meets federal and state requirements for liability coverage for petroleum releases and their associated expenses. The program focuses on prevention of releases, responsiveness to any release, and emphasizes remediation of releases in areas of risk for drinking water impacts or to equitably protect human health and the environment in communities that are marginalized, overburdened, and underserved.

Statutory Authority for Adoption: RCW 70A.545.020.

Statute Being Implemented: Chapter 70A.545 RCW, Petroleum underground storage tanks—Financial assurance program.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Phi V. Ly, 500 Columbia Street N.W., #103, Olympia, WA 98501, 360-407-0520.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule does not meet the conditions of RCW 34.05.328 (5)(a) that mandate a cost-benefit analysis, and PLIA is not choosing to voluntarily subject the rule to a cost-benefit analysis.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

Section 1: Introduction: PLIA proposes a new rule to administer a program giving owners and operators of commercial petroleum USTs an alternative mechanism to meet federal[1] and state[2] financial responsibility requirements. The proposed rule will define criteria and procedures for a state-run program that will replace the state's existing UST reinsurance program. Since the proposed rule has the potential to impose more-than-minor costs on businesses, an SBEIS is required by law (RCW 19.85.030). This study has been developed to analyze the compliance costs of the proposed rule to small and large businesses to determine whether small businesses will bear a disproportionate share of these costs or experience any economic impacts from participating in the program.

Objective of the SBEIS: The objective of the SBEIS, as established in RCW 19.85.040, is to identify and evaluate the various requirements and costs that the rule might impose on businesses. In particular, the purpose is to determine whether a disproportionate impact of the compliance costs is borne by small businesses in the state. The legislative purpose of the Regulatory Fairness Act (RFA, chapter 19.85 RCW) is set out in RCW 19.85.011:

"The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business."

The specific purpose of the SBEIS is identified in RCW 19.85.040:

"A small business economic impact statement must include [1] a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and [2] the kinds of professional services that a small business is likely to need in order to comply with such requirements. [3] It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs. [4] It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. [5] To determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed

rules using one or more of the following as a basis for comparing costs:

(a) Cost per employee;

(b) Cost per hour of labor; or

(c) Cost per one hundred dollars of sales.

(2) A small business economic impact statement must also include:

(a)[6] A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(3), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(3);

(b)[7] A description of how the agency will involve small businesses in the development of the rule;

(c)[8] A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply and;

(d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

Summary of Proposed Rule: Federal and state laws require petroleum UST owners and operators to demonstrate financial responsibility through a form of liability coverage that can pay for costs arising from releases or contamination from such tanks. Owners and operators can meet financial responsibility through an allowable mechanism such as personal guarantee, self-insurance, or a liability insurance policy. Since 1989, PLIA has administered the reinsurance program whereby PLIA serves as a reinsurer for policies through three private insurance companies that UST owners or operators use to apply for coverage. As the reinsurer, the state, through PLIA, covers claim costs over $75,000 up to the policy limit of $1 million. Essentially, private insurance companies are only responsible for a maximum payment of $75,000 per settlement, leaving PLIA responsible for settlement costs over $75,000. It should be noted that PLIA only covers total settlement costs up to $1 million, so the maximum PLIA reinsurance responsibility is $925,000 per settlement. For tanks older than 30 years of age, PLIA covers only 90 percent of the total settlement cost. While PLIA is responsible for covering these settlement costs, the private insurance company is still responsible for hiring contractors to cleanup releases and address any contamination. PLIA is charged for all costs that exceed the $75,000 threshold. From 2018 through 2023, the number of insurance claims has increased,[3] as has the number of denied claims and denied coverage applications by private insurance companies.[4]

PLIA obtained legislative authority in 2023 to establish and administer a state-run program that allows UST owners and operators to maintain financial responsibility and to work directly with the state in addressing releases and contamination from their USTs.

The proposed program rule provides for implementation of a program for UST owners and operators that will be administered by PLIA.

Under the reinsurance program, PLIA only charges the private insurance companies one percent of the primary insurance policy premiums (which is far less than the typical charge for reinsurance coverage).[5] Such reductions in costs can assist in making liability insurance, (which is a federal requirement), more affordable for UST owner and operators.

Under the proposed program, PLIA will offer direct coverage for remediation costs incurred by UST owners and operators enrolled in the

program. PLIA will cover claims up to $2 million. They will offer coverage of up to $1 million to UST owners and operators that require remedial action costs resulting from a petroleum release from a UST prior to enrollment. The main difference between the new program and the current reinsurance program is that the private insurance companies will not be involved in coverage decisions and that the claim cap per site will now cover claims up to $2 million. UST owners and operators will continue to have the option to purchase private liability insurance if they would prefer to do so.

Once the program is implemented, PLIA will begin the transition out of the reinsurance program through treaty negotiations with the private insurers. PLIA may honor and continue management of any existing, unsettled reinsurance claims. Once the transition is complete, UST owners and operators may still purchase pollution liability insurance from private insurers at market rate.

Eligible costs covered by the program include, but are not limited to, remedial action, testing, monitoring, assessments, third-party costs as defined in WAC 374-10-080, necessary infrastructure replacement costs, and replacement costs for a new petroleum UST or its system that meets the current standards for such tank systems, as specified in program guidance. Ineligible costs include, but are not limited to, penalties or fines issued by other agencies, third-party recovery not permitted by WAC 374-10-080, remedial action that exceeds cleanup level standards, lost business income, cleanup of contamination from other sources, and legal defense costs.

The program will have certain eligibility requirements for a UST:

- Maintain compliance with the requirements of chapter 173-360A WAC, UST regulations or federal equivalent.
- Be registered with the department of ecology (ecology), the federal government, or a tribal government.

Any owner or operator of an enrolled petroleum UST determined to have committed fraud under WAC 374-10-130 is ineligible to enroll in the program. In addition, those wishing to participate in the program must apply and the tank must be enrolled in the program to be eligible. The tank must be located in the state of Washington, and only one entity at a time may enroll a specific tank.

Under the current reinsurance program, UST owners and operators cannot make a claim for a preexisting leak. Under the proposed program, UST owners and operators may still be accepted into the program even if their UST has a preexisting leak so long as the applicant discloses known releases from the UST or its system and are actively seeking or working through remediation. The historic release must have been reported to ecology and remedial actions completed, planned, or scheduled. The new program will provide funds up to $1 million for remedial actions costs for leaks that occur prior to enrollment with the intent that these costs may be recovered by PLIA.

Applications for enrollment in the program will be available online. PLIA will notify applicants if they have been accepted or denied into the program. The enrollment term is 12 months, and coverage starts on the enrollment date with renewals occurring annually on that date. Those enrolled in the program must pay an annual enrollment fee. The enrollment fee is reviewed every four years based on costs associated with administration of the program. After the first year of enrollment, the enrollment fee may be discounted based on the following factors:

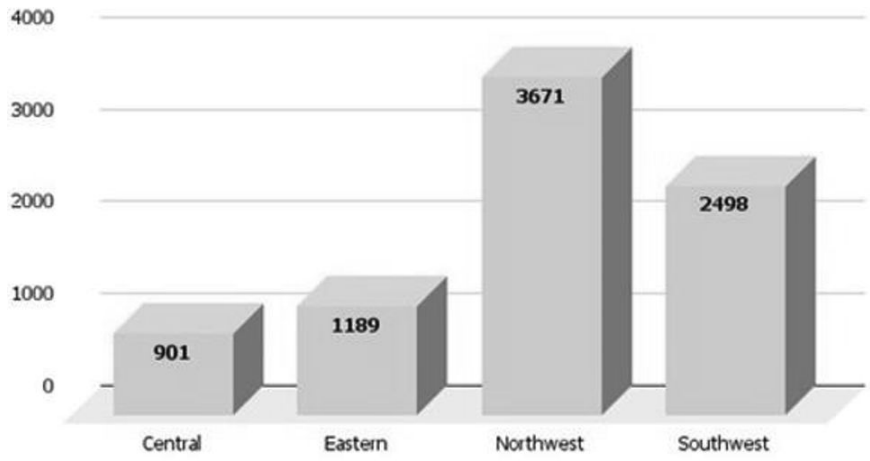
- Age of UST, the facility, and associated infrastructure;
- Physical condition of the facility; and
- Whether the owner or operator adheres to industry best practices for preventing releases from USTs.

The enrollment fee structure is still being developed during this rule-making stage; however, the enrollment fee cannot exceed $25,000.

Industries Required to Comply With New Rule: UST owners and operators can be found in several different industries throughout Washington. The following analysis of Washington state UST operational sites by site type was conducted using an extensive database[6] which contains all regulated tanks installed and documented in the state since 1900 and was made available through ecology's website.[7] The database includes important information regarding the sites, tanks, and tank compartments. For example, the database lists each site name, region of the state, county, the number of tanks, date of installment, the material stored in each tank, and the material used to construct each tank. The database does not include information about tank conditions, nor the type of business using the tanks, nor did it contain any information regarding the status or cost of their liability coverage.

Valuable information can be found using this database. For instance, there are more operational tanks in western Washington compared to the eastern and central parts of the state. The Northwest region is comprised of only seven counties, but these counties house over 3,600 USTs. The Central region also contains seven counties but houses less than 1,000 USTs. The Southwest region (12 counties) and Eastern region (13 counties) also contain a similar number of counties, but the Southwest region has double the number of USTs. As seen in the graphic below, the northwestern region has the greatest number of USTs with triple the number of operational tanks compared to the Central region and the Eastern region (see Figure 1).

Figure 1: Total Number of Operational UST by Region in the State



As of April 2024, there are 3,235 sites with at least one tank listed as "operational." Tanks are given various different statuses, such as "Removed," "Closed In Place," "Closure In Progress," "Temporarily Closed," "Red Tag," and more. As seen in the table below, of the 15,078 total UST systems in the ecology UST database, 8,251 are labeled operational. There is an average of 2.6 operational tanks per site.

Table 1: UST by Status

UST Status	Number of UST
Operational	8,251
Change in Service	14
Closed in Place	427
Closure in Process	73
Exempt	326
Red Tag	26
Removed	5,609
Temporarily Closed	331
Unknown	16
Unregister 30-day Notice	5

Of the operational tanks, the vast majority are between 25 and 40 years of age, nearing or at the end of their viable lifespan. The table below highlights this trend (see Table 2).

Table 2: Age Breakdown of Operational UST

Age in yrs.	0-9	10-14	15-19	20-24	25-29	30-24	35-40	40-44	45+
# of Operational Tanks	505	292	364	446	1,590	2,128	1,586	648	687

Small gas stations made up the largest portion of operational sites. A series of informed data refinements were employed to estimate the number of sites that are small gas stations (including those with a convenience store attached), and the share of all operational tanks represented by this group. The first step in this process involved isolating the group of tanks with contents labeled under both "Motor Fuel for Vehicles" and "Unleaded Gasoline," as those are the classifications that at least one tank at every small gas station would adhere to. Following this, the hypermarkets of Costco, Safeway, Walmart, and Fred Meyer were filtered out, and a word search was employed to remove sites with naming conventions not likely to be used by small gas stations. For example, this method eliminated all police departments, fire departments, hospitals, Washington state department of transportation (WSDOT) fueling stations, and sites with "port of" or "city of" in their name. This analysis resulted in a final list of 2,360 sites, or approximately 73 percent of all operational sites.

Emergency generator tanks (EGTs) are the next most common type of UST held by a broad variety of business types. These represent just over nine percent, followed by large gas stations (hypermarkets such as Costco and Safeway) at 5.4 percent. The table below contains around 90 percent of the total 3,235 operational sites. The remaining 10 percent belong to a diverse array of groups from large fleet owning companies like Microsoft to small businesses with niche UST needs. While the larger organizations might also apply to the proposed program, identifying the specific type of business was not possible with the available data. However, the table below provides a general overview of UST owners and operators potentially affected by the proposed program (see Table 3).

Table 3: Statewide Breakdown of UST Sites

Site Type	Percentage of Operational Sites	Number of Operational Sites
Small Gas Stations	73.0%	2,360
Large Gas Stations (Hypermarkets)	5.4%	176
Emergency Generator Tanks	9.2%	298
Aviation Fuel Supply Tanks	1.4%	45

Site Type	Percentage of Operational Sites	Number of Operational Sites
Heating Fuel Supply Tanks	0.8%	26
Hospitals	1.0%	31
Truck Stops	0.5%	16
Total	**91.3%**	**2,952**

Based on the information available from the ecology UST database, the following table lists the industrial codes (NAICS) for the sectors that will potentially be impacted by this new rule (see Table 4). UST owners and operators fall under a wide variety of industries, which makes it challenging to compile a complete NAICS list of industries potentially impacted by the new program. Some of the potentially affected entities are in such broad industries that only the two-digit NAICS code is provided.

Table 4: NAICS for Industries Potentially Impacted by Proposed Program

Type of Business	NAICS Code/s		
Petroleum Refineries	324110		
Gas Stations/Truck Stops	447190		
Convenience Stores (w/ gas station)	447110		
Heating Oil Distributors	454310		
Hospitals	622110	622310	622210
Airports	488119		
Fleets	532112		
Agriculture	11		
Government	92		

Methods of Analysis: This analysis compares the cost of compliance per $100 of sales between large and small businesses that own USTs, in order to determine whether small businesses will bear a disproportionate share of these costs. Based on sales, the hypermarkets, or large gas stations are considered the largest businesses in this analysis. Small businesses, most of which are small gas stations, are aggregated, and the total per $100 of sales cost is compared with that for the largest businesses to assess whether or not a disproportionate impact is expected for small businesses.

Section 2: Compliance Costs for Washington Businesses: Beside self-insurance, UST owners have a few other options for liability coverage today including bonds, personal guarantees and other mechanisms that add up to the $1 million required coverage. The most common way to meet the coverage requirement is to purchase a policy through the private insurance market. Private insurers charge a premium that must be paid by the UST owner or operator. A separate database containing premium payment information regarding UST owners was provided by PLIA for the explicit purposes of this report.[8] The annual premium amount is listed alongside the deductible amount, the number of tanks on site, whether the site is insured by PLIA or not, and both the date on which the insurance became effective and the date on which it expires.

The policy premiums presented in the database also have different deductibles, which primarily fall between $1,000 and $10,000, with the average being $6,098. Interestingly, policies with higher deductibles do not always have a lower premium. This finding is highlighted in the four tables attached in Appendix A. It is likely that other factors such as tank age or tank material impact the policy fee and deductible

under each policy. The table below includes the average insurance premium per tank paid by UST owners and operators per month and annually in 2024 (see Table 5). The premiums are shown by number of tanks per site. With private insurance, UST owners and operators are paying between $700 and $1,600 on average per tank per year for coverage. UST owners with more tanks generally pay less per tank than those with fewer tanks per site. However, this trend is not consistent. After removing outliers, the premiums had an average of $2,966, a median of $1,902, and a mode of $1,058. It should be noted that premiums scale based on the number of tanks on site. Included among these sites are 116 that host more than 15 UST systems. These USTs likely belong to large businesses that have policies for multiple tanks.

Table 5: Average Private Insurance Premiums per Tank and Total for UST Sites by Number of Tanks, 2019 - 2024

	All UST sites	UST sites with 1 tank	UST sites with 2 tanks	UST Sites with 3 tanks	UST sites with 4 tanks
Annual premium per tank	$922	$1,730	$824	$841	$796
Annual premium	$2,966	$1,730	$1,648	$2,523	$3,182
Monthly premium per tank	$76	$144	$68	$70	$66
Monthly premium	$247	$144	$137	$210	$265

Given the incomplete nature of available data on costs, some inferences need to be developed to assess the costs to small businesses who are UST owners. In addition to the premiums, some portion of these firms will also experience a leak, and likely need to pay the deductible in addition to the premium in the year that the tank leaks. It is difficult to predict leakage, however there are records going back to the 1990s that were analyzed in a report on USTs in Washington from 2015.[9] This work suggests that between 1990 and 2015, there were 6,805 leaks, or about 272 per year. Knowing that since that time, the numbers of storage tank leaks have been reduced overall,[10] a conservative estimate might be a 10 percent leak rate going forward for the 1,632 existing UST sites. Using a $10,000 deductible (most common), this suggests that on average, UST owners pay an additional $100 per year in deductible. That is, if there is a 10 percent chance of failure each year, then over 10 years, each owner might be expected to pay the deductible one time.

Since the current policy premiums and deductibles do not have the typical inverse relationship commonly seen under most insurance policies, it is safe to assume that other factors impact the premium costs and deductible for each UST coverage policy holder. The enrollment fee associated with the program will similarly be affected by these other UST factors.

Those who enroll their tanks in the program will pay a standard enrollment fee for the first year they are enrolled. The enrollment fee will not exceed $25,000 a year. After the first year, enrollment discounts may be available to tanks based on condition, best practices, etc. and will be offered to those whose tanks meet the criteria for these discounts.

Based on the analysis of current premiums and the discount categories listed under the proposed program, tank age and tank material are key factors that impact claim costs. Newer tanks are less likely to leak than older tanks, except for tanks that have had bioremediation. The analysis of the ecology UST database indicated that around 52 percent of operational tanks are composed of steel, and the remain-

ing tanks were constructed out of fiberglass reinforced plastic. Table 6 shows an analysis of the operational tanks in Washington, broken down by age (greater than, or less than 30 years) and tank material – whether made of steel or fiberglass. Although the largest of the four groups is steel tanks older than 30 years, the breakdown suggests that the tanks are distributed within these four groups.

Table 6: Operational Tanks by Age and Tank Material

Category of UST	Percentage of Operational UST
Fiberglass construction <30 years old	20.6%
Fiberglass construction > 30 years old	26.6%
Steel construction <30 years old	19.4%
Steel construction >30 years old	33.7%

The program enrollment fee will cover the administration and expense of administering the program, and as such, will be determined based on anticipated administration costs and risks with petroleum cleanup. Discounts, available after year one, will likely be determined by the age of the tanks, tank construction materials, and proactive actions that owners and operators can take to mitigate release. Though the enrollment fee structure is still under development, the following assumptions have been made:

- The enrollment fee will be similar to the mean ($2,966), median ($1,902), and mode ($1,058) of the private insurance premium data.
  - The enrollment fee per tank will likely be between $1,250 and $2,000 based on these values.
- Age, tank material, and tank operation management are key factors in predicting potential leaks, and therefore will likely have an impact on enrollment fee discounts, which will become available after the first year of the program.
  - Other factors such as best practices will also impact enrollment fees after the first year.

Some UST owners and operators are likely paying higher premiums because their tanks are older and/or made of less robust material. These UST owners may qualify for any future discounts on the financial assurance enrollment fee. After the first year, the PLIA reinsurance program will likely cease, which may result in UST owners and operators having to pay more for private or commercial reinsurance. At this point, UST owners and operators with lower premiums may have to pay more under private insurance without the support of reinsurance.

After qualified tanks have been enrolled for one year, PLIA will start offering discounts on their enrollment fee for USTs based on age, material and best practices utilized, reducing their enrollment fee for UST owners and operators with newer tanks. The discounts will make the PLIA enrollment fee drop closer to the premium payments currently paid by UST owners and operators with newer tanks. The reduction in enrollment fee cost paired with the removal of the reinsurance program will result in similar insurance costs for most UST owners and operators today. The system is designed so that UST owners and operators will always have options for liability coverage, and that this public option is always available.

Table 7: Expected Average Annual Enrollment Fee per Site and per Tank for the Financial Assurance Program

Current Premium Statistic	Anticipated Enrollment Fee per Site	Anticipated Enrollment Fee per Tank
Mean	$2,966	$945
Median	$1,902	$752
Mode	$1,058	$529

An SBEIS must also include a discussion of costs related to reporting and recordkeeping, additional professional services, compliance costs, and loss of revenue and sales anticipated under the new regulation, which is the proposed program in this instance.

In terms of recordkeeping and reporting, there are no additional costs anticipated. The application form will be available online and PLIA is willing to provide other formats to applicants if the online application is not suitable. There should be no more recordkeeping or reporting requirements than are currently required under private insurance coverage. In terms of additional professional services, particularly for small businesses, none are anticipated. The application is available online and while PLIA may randomly select the facility for an assessment, this will not require any effort, or services conducted by the UST owner or operator. There are currently no compliance costs associated with this new program, though PLIA may require upgrades to some system parts like alarm systems. Those who voluntarily choose to enroll in the program will be subject to an enrollment fee. This fee would replace the premium fees currently charged under private insurance, and again, is not mandatory. Finally, there are no anticipated losses of revenue or sales to UST owners and operators. So long as businesses apply for the program or private insurance before their previous coverage ends, their business should remain unaffected by the change or reapplication in coverage.

Since the program requires almost identical recordkeeping, professional services, and compliance costs as the other private insurance options that are available today and will remain available in the future, the number of jobs is not expected to change for the impacted businesses. However, the management of this program will create 32[11] full time equivalents (FTE) jobs within PLIA.

Section 3: Analysis of Impact on Small Businesses: The proposed program will be voluntary. It will not replace the private insurance market, but rather, provide an additional mechanism for UST owners and operators to use in meeting federal and state liability coverage requirements.

To determine if the proposed program will have a disproportionate impact on small businesses relative to large businesses, both small and large businesses were identified. As mentioned in section 1, the top 10 percent of businesses are considered large businesses. For this analysis, hypermarkets, or large gas station corporations are considered large businesses. Additionally, hospitals and aviation fuel supply tanks are also considered large businesses. Though they make up just under eight percent of the ecology UST database, this is the only group of affected businesses that consistently fall in the top 10 percent of annual sales and have more than 50 employees, which is the distinction for small businesses. The vast majority of USTs belong to small businesses, almost all of which are independently owned gas stations. The remaining small businesses with USTs come from other industries (e.g., construction, nonretail facilities) and are harder to identify. Therefore, small, independently owned gas stations will represent small businesses for this analysis, while hypermarkets, hospi-

tals, and airports represent large businesses within this analysis (see Table 8).

Table 8: Breakdown of Small and Large Businesses Potentially Impacted by Proposed Program:

Sector Class	Description of Sector Class	Average Annual Sales	Number of Businesses
Large	Hyper markets (Costco, Safeway, Fred Meyers), hospitals and airports		~254
Small	Small independently owned gas stations	$9.8 million[12]	~2,360

Hypermarkets, like Costco and Safeway, are generally self-insured, meaning that the larger corporation has the financial capacity to pay for leak repairs, remediation, and cleanup without additional financial support. Those utilizing self-insurance do not have to pay private insurers for coverage. It is unlikely that these groups will switch to the program when they currently pay no additional costs utilizing self-insurance. As a result, the anticipated cost of the program to the largest businesses will be zero.

Smaller businesses and other larger groups that are not self-insured are presently insured through the risk management pools. During 2025, the reinsurance program will still be operating, and so firms will have the choice to switch from their current private insurers to the PLIA program. After 2025, the PLIA reinsurance program will be replaced by the program, and so these businesses have the option to switch from private insurance to the program. As mentioned in the previous section, the enrollment fee for the first year of the program is expected to be roughly equivalent to the premiums that these firms currently face (see Table 7). However, after 2025, potential discounts for preventative measures that owners can take will mean that firms will have the option to receive discounts for year two and every following year. Hence, small businesses may end up paying less for coverage than they would have with private insurance.

UST owners and operators will continue to have choices for meeting financial responsibility through the mechanisms in the state regulations, chapter 173-360A WAC, Part 10. With that in mind, large and small businesses alike are not expected to enroll in the proposed program unless it reduces their liability coverage costs. The hypermarket groups are not expected to be impacted as they are currently and likely will remain self-insured even with the program in place. And in general, small businesses are expected to face enrollment fees similar to the premiums that they are currently paying during the first year and will have the option to reduce their annual payments in future years. Hence, they are not expected to incur any additional costs in the long run. In fact, the fee structure will reward proactive maintenance, and therefore should reduce claims in the long run too, and claimants in those cases would have to pay a deductible on top of their premiums.

Ultimately, there are three potential cases. In the first case, there is the potential that the enrollment fees for the new program are higher than the current private insurance cost for a particular firm, which is possible because coverage is more expansive under the program compared to private insurance coverage (e.g. no deductible). In this case, UST owners and operators are under no obligation to switch to the program and might elect to continue insuring USTs through private insurance for the first year. Hence in this case,

there will be no additional costs associated with the new rule in that first year.

A second case could be that the enrollment fee an owner faces is essentially the same as the premiums offered by private insurers. In this case, there will again be no additional cost to the UST owners, because whichever option is selected will not present an additional cost to the owner. However, with no deductible required in the program, these owners may be expected to switch to the program.

Finally, if the program offers a less costly alternative to private coverage for some small business UST owners, then those businesses would also be expected to switch to the PLIA program and as such, would be positively impacted by the rule through cost savings and expanded coverage.

Ultimately, small businesses as a group are not expected to be disproportionately impacted by the proposed program. If anything, their federally required liability coverage will become more affordable than it is under the private insurance market.

Section 4: Small Business Involvement in Rule Making and Impact Reduction Efforts: Involvement of Small Business in the Development of the Proposed Rule: Prior to the 2023 legislation, PLIA engaged with stakeholders including Washington Independent Dealers of Energy (WIDE) - (formerly known as Washington Oil Marketers Association or WOMA), legislators, and the legal community to vet the program concept. During the legislative session, PLIA also drafted fact sheets and provided legislative staff with background information about UST financial requirements and raised issue over the current reinsurance program in which private insurance groups lead cleanup efforts, despite their priorities not always aligning with state cleanup standards.

In addition, PLIA held two public listening sessions as part of their outreach efforts. These public listening sessions invited the public and interested parties to offer feedback to help develop rules for the program. These sessions were held on September 19 and October 24, 2023. Several of the summarized comments are small business specific, indicating participation from small businesses.[13] From the listening session comments summary, participants in the session expressed hope that:

- The program will open up more options and funds for smaller businesses in the more rural areas of the state;
- Funding may be provided prior to a leak to main infrastructure and reduce leaks; and
- PLIA will continue to ask for feedback during the program.[14]

Once the draft rule language is made available in spring 2024, through the next rule-making filing, PLIA will host virtual public comment hearings so that stakeholders, including small business UST owners and operators may voice questions and/or comments.[15] PLIA will also be accepting written comments at this time. The feedback gathered from this outreach will be considered before the rule is finalized.

These public outreach efforts are intended to engage the public in the rule-making process, especially those who will be impacted by this new rule. Small businesses will also have the opportunity to write in comments if the public comment sessions do not fit into their schedule.

Actions Taken to Reduce the Impact of the Rule on Small Businesses: PLIA has taken several steps to reduce the impacts to small and minority owned businesses. By incorporating potential discounts, based

on prevention measures that owners can proactively take, into the enrollment fee structure of the program, the proposed program reduces impacts on small businesses. The UST owners and operators may receive a discount if they adhere to industry best practices for preventing releases from USTs. This is an area in which small businesses could receive a discounted enrollment fee. Finally, the enrollment fee has been capped at $25,000, meaning that under no circumstances will any business pay more than $25,000 a year for the program.

1 40 C.F.R. Part 280 Subpart H – Financial Responsibility
2 WAC 173-360A-1000 to – 1097, Part 10 – Financial Responsibility.
3 Washington State Pollution Liability Insurance Agency (PLIA). 2024. PLIA Book Quarterly Updates through December 2023.
4 Ibid.
5 Ibid.
6 Department of Ecology. Regulated Underground Storage Tanks (USTs).
7 It should be noted that the percentages presented in the table below should be viewed as estimations while a thorough examination of the database was conducted, some site types were harder to identify than others based on naming practice among other challenges.
8 PLIA. 2024. Confidential Insurance Report.
9 Integrative Economics, LLC, Sound Resource Economics. 2015. "Economic Report on Petroleum Storage Tanks in Washington."
10 USEPA, "20 Years of Progress Closing LUST Sites" PowerPoint from EPA Website on Underground Storage Tanks, 2023, December.
11 PLIA. 2023. "Petroleum storage tanks," Fiscal Note Package 68557.
12 From IMPLAN, 2022. Unites States (US Totals) Region. Available at: https://implan.com
13 PLIA. Financial Assurance Program Listening Sessions.
14 Ibid.
15 PLIA. 2024. Financial Assurance Program Frequently Asked Questions. April 2nd.

A copy of the statement may be obtained by contacting Phi V. Ly, P.O. Box 40930, Olympia, WA 98504-0930, phone 360-407-0520, email Phi.Ly@plia.wa.gov.

June 4, 2024
Phi V. Ly
Legislative and Policy Manager

OTS-5288.2

Chapter 374-10 WAC
STATE FINANCIAL ASSURANCE PROGRAM

NEW SECTION

WAC 374-10-010 Purpose. As authorized by chapter 70A.545 RCW, the purpose of this chapter is to establish criteria and procedures for the payment of costs from the state financial assurance program to the owners or operators of commercial petroleum underground storage tank systems. The agency will administer the program with a focus on release prevention and remediation and the equitable protection of human health and the environment. The program allows owners and operators to meet financial responsibility requirements.

NEW SECTION

WAC 374-10-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Agency" means the Washington state pollution liability insurance agency and may be referred to as PLIA throughout this chapter. For purposes of chapter 70A.545 RCW, agency or PLIA shall also mean staff or employees of the pollution liability insurance agency.

(2) "Bodily injury" means actual medically documented costs and medically documentable future costs of adverse health effects that have resulted from exposure to a release from a petroleum underground storage tank. The term does not include pain and suffering.

(3) "Director" means the director or designee of the Washington state pollution liability insurance agency.

(4) "Enrollment" or "enrolled" means the status of a petroleum underground storage tank where it has been accepted by the agency into the state financial assurance program, the enrollment agreement has been signed and payment for the program has been made by the owner or operator of the eligible petroleum underground storage tank.

(5) "Facility assessment" means an evaluation of a petroleum underground storage tank, its system, or the facility.

(6) "Financial assurance request" means a request for payment from the state financial assurance program filed by an owner or operator of an enrolled petroleum underground storage tank.

(7) "MTCA" means the Model Toxics Control Act (chapter 70A.305 RCW).

(8) "Online community" means the cloud-based application and data system used by the agency and the agency's customers to submit documentation and to report, process, and look up project information.

(9) "Owner or operator" means the entity in control of, or having a responsibility for, the daily operation of a petroleum underground storage tank.

(10) "Petroleum" means any petroleum-based substance, including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. "Petroleum" includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The term does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

(11) "Petroleum underground storage tank" means an underground storage tank regulated under chapter 70A.355 RCW or subtitle I of the Solid Waste Disposal Act (42 U.S.C. chapter 82, subchapter IX) that is used for storing petroleum. This includes tanks owned or operated on property under the direct jurisdiction of either the federal government or tribal governments. Underground storage tanks used for the heating of residences on the premises where the tank is located are excluded in this definition.

(12) "Petroleum underground storage tank facility" means the location where the petroleum underground storage tank and its system is located. The term encompasses all real property under common ownership associated with the operation of the petroleum underground storage tank.

(13) "Petroleum underground storage tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

(14) "Prime consultant" means an environmental consultant or business contracted by the agency to perform remediation under the program.

(15) "Program" means the state financial assurance program established by chapter 70A.545 RCW.

(16) "Property damage" means a documented adverse physical impact to structures or property resulting from a release from a petroleum underground storage tank. The term does not include business income whose loss is related to the petroleum release or remediation activities.

(17) "Release" has the same meaning as defined in RCW 70A.305.020.

(18) "Remedial action" or "remedy" has the same meaning as defined in RCW 70A.305.020.

(19) "Site" has the same meaning as "facility" as defined in RCW 70A.305.020.

(20) "Third-party claim" means a claim for funds from the program by an injured party for bodily injury or property damages resulting from a release from a petroleum underground storage tank. The following entities are not considered a third party: A petroleum underground storage tank owner or operator from which the release occurred; the owner of the property where the petroleum underground storage tank is located; a person to whom properties are transferred in anticipation of damage due to a release; employees or agents of the operator; or employees or agents of the property owner.

NEW SECTION

WAC 374-10-030 Eligibility for financial assurance. (1) To participate in the financial assurance program, the owner or operator of a petroleum underground storage tank must apply and the tank must be enrolled in the program. Enrollment is limited to a petroleum underground storage tank located in Washington. If the owner and operator of the petroleum underground storage tank are separate entities, only one entity at a time may enroll the tank.

(2) To be eligible to participate in the financial assurance program, the petroleum underground storage tank system must meet the following requirements:

(a) Maintain compliance with the requirements of chapter 173-360A WAC, Underground storage tank regulations or federal equivalent.

(b) Be registered with the department of ecology, the federal government, or a tribal government.

(3) An owner or operator of an enrolled petroleum underground tank determined to have committed fraud as described in WAC 374-10-130 is ineligible to later enroll that tank.

NEW SECTION

WAC 374-10-040 Application, enrollment, and fees. (1)(a) Applications for program enrollment are made using the agency's online com-

munity. If requested from the agency, alternative formats for application will be provided. The agency will review all applications for completeness. Incomplete applications will not be accepted.

(b) The application must include information on any known release from the petroleum underground storage tank system. To be considered for enrollment, one of the following requirements must be met and approved by the agency.

(i) The release has been reported to the department of ecology, federal, or tribal government as required, and remedial actions have been completed as an independent action or under an agreed order or consent decree. For an independent action, the release and remedial actions have been reviewed by either the department of ecology's voluntary cleanup program or the agency's technical assistance program and a no further action letter has been issued. For remedial actions completed under an agreed order or consent decree, the department of ecology must have issued a written determination that requirements of the order or decree have been met.

(ii) The release has been reported to the department of ecology and independent remedial actions have been planned but not yet completed or independent remedial actions completed but without a no further action letter from the department of ecology's voluntary cleanup program or the agency's technical assistance program. The planned remedial actions must be reviewed by the agency prior to enrollment, and the independent cleanup must be entered into the agency's technical assistance program. A remedial action schedule with milestones will be part of the enrollment agreement and must be adhered to for the tank to remain enrolled in the program.

(iii) The release has been reported to the department of ecology and remedial actions are required under an agreed order or consent decree. The remedial action schedule in the agreed order or consent decree must be adhered to for the tank to remain enrolled in the program.

(2) An enrolled petroleum underground storage tank may be randomly selected for a facility assessment. Those selected for a facility assessment will be notified.

(3) The agency will notify the applicant if their application has been accepted for enrollment. The petroleum underground storage tank is considered enrolled in the program on the date that the agency signs the enrollment agreement.

(4) The agency will notify the applicant if their application has been denied. Denial of enrollment will be documented in writing.

(5) The enrollment term is 12 months, with coverage commencing on the enrollment date (the date the agency signs the enrollment agreement). Renewals occur on the same date each subsequent year and coverage is continuous unless the agency or the enrolled owner or operator cancels enrollment.

(6) The enrollment fee pays for the enrollment of a petroleum underground storage tank for a term of 12 months. Enrollees may request a payment plan from the agency, but the entire enrollment fee amount must be paid to the agency within the 12-month enrollment term period. No refunds of the enrollment fee will be made, regardless of whether the petroleum underground storage tank coverage is canceled.

(7) The enrollment fees will be updated at least every four years and will be posted on the agency's website. The enrollment fee amount contributes to the agency's costs for program operations and administration.

(8) An enrollment fee may be discounted at the discretion of PLIA. Approved discounts are applied following the first year of enrollment on the renewal date for the second year of coverage and evaluated each subsequent year.

(9) Discounts may include, but are not limited to, the following factors:

(a) The age of the facility, individual petroleum tank system, and associated infrastructure;

(b) The physical condition of the facility; or

(c) Whether the owner or operator adheres to industry best practices for preventing releases from petroleum underground storage tanks.

NEW SECTION

WAC 374-10-050 Cancellation of enrollment. (1) The agency will cancel enrollment for any of the following reasons:

(a) Failure to maintain the petroleum tank system or tank facility to a standard established in the program policy or enrollment agreement;

(b) Failure to comply with remediation plans agreed to with a federal or state agency or tribal government;

(c) Refusal to allow the agency to conduct a facility assessment;

(d) Failure to meet any cleanup milestones listed and submitted with the enrollment agreement;

(e) Failure to notify the agency of a release from the enrolled petroleum underground storage tank;

(f) Failure to notify the agency of any notice of noncompliance or notice of violation issued by a regulatory agency;

(g) Failure to allow the agency access to the enrolled petroleum underground storage tank system;

(h) Failure to allow the agency to conduct remedial action(s) related to a release from the enrolled petroleum underground storage tank;

(i) Failure to fulfill terms of the enrollment agreement; and

(j) Fraud by any owner or operator, as described in WAC 374-010-130 regarding the enrolled tank.

(2) The agency will provide written notice of cancellation describing the reason(s) for cancellation to the owner or operator of the enrolled petroleum tank. The written notice will identify how to remedy the issues leading to cancellation.

(3) Cancellation by the agency is effective 45 calendar days from the date of written notice. Coverage under the program will end on that effective date unless the cancellation is disputed.

(4) The owner or operator may dispute the cancellation by requesting a review of the agency decision as described in WAC 374-10-140 within 45 calendar days from notice of the cancellation.

(a) Coverage under the program will continue during the dispute review process.

(b) If, after the review of the dispute, the agency determines that a cancellation is still appropriate, cancellation is effective 45 days from the date of the dispute review's written notice. Coverage under the program will end on that effective date.

(c) If the owner or operator seeks to appeal the agency's dispute review decision as allowed in WAC 374-10-140(4), the cancellation is

still effective as of the date of the dispute review's written notice. Coverage under the program will not continue during the director review process.

(5) The owner or operator of an enrolled petroleum tank may request cancellation of enrollment at any time. Coverage will continue for the enrollment term, ending on the renewal date.

If the owner or operator uses another financial responsibility mechanism and requires coverage to address a release, this program's coverage is applied as secondary coverage.

(6) If an entity is no longer the owner or operator of the enrolled petroleum underground storage tank, then coverage under the program is canceled and the cancellation date is based on when the entity is no longer the owner or operator.

NEW SECTION

WAC 374-10-060 Financial assurance coverage. (1) Release from the petroleum underground storage tank after enrollment.

(a) The program will provide financial assurance funds of up to $2,000,000, per tank, for remedial action costs to address a release that occurs after enrollment from a petroleum underground storage tank system, and any other petroleum releases which may be occurring simultaneously at the facility at which the petroleum underground storage tank is located.

A third-party claim will be distributed from these funds. Before funding any third-party claim resulting from a release, the agency must reserve the estimated cost of any remedial actions necessary to address the release, and if funding is remaining then payment may be made on an eligible third-party claim.

(b) If there is a dispute with the agency determination on timing of the release, the owner or operator must show by clear, cogent, and convincing evidence that a release occurred post enrollment.

(c) Failure to provide the agency with a property access agreement from the property owner where the petroleum underground storage tank is located will result in denial of financial assurance funds.

(2) Release from a petroleum underground storage tank prior to enrollment.

(a) The program will provide funds of up to $1,000,000 for remedial action costs to address all releases from a petroleum underground storage tank system that occurred prior to enrollment.

(b) If there is a dispute with the agency determination on timing of the release, the owner or operator must show by clear, cogent, and convincing evidence that a release occurred post enrollment.

(c) Financial assurance funds provided under this subsection will be subject to cost recovery.

(3) Financial assurance coverage shall not exceed $3,000,000 per state fiscal year for multiple occurrences involving a single petroleum underground storage tank.

(4) Priority coverage.

(a) Per RCW 70A.545.020(7), funding for remedial action is prioritized over third-party costs. The agency must reserve the estimated costs of necessary remedial actions, and then payment may be made on eligible third-party costs.

(b) Per RCW 70A.545.020(6), the agency may prioritize program funding for investigations and remedial actions deemed necessary to address:

(i) An emergency which threatens human health or the environment; or

(ii) A population threatened by the release that includes an overburdened community, as defined in RCW 70A.02.010(11), or a vulnerable population, as defined in RCW 70A.02.010(14).

(c) The director may prioritize funding at their discretion using factors specified by the agency.

(5) Once a no further action letter is issued by the agency's technical assistance program for the release from the enrolled petroleum underground storage tank, the financial assurance coverage is complete, and funding will no longer be available.

NEW SECTION

WAC 374-10-070 Financial assurance request. (1) All program enrollees must review and reference the program policy guidance prior to requesting coverage from the financial assurance program. The agency maintains this document on its website.

(2) An owner or operator of an enrolled petroleum underground storage tank must report a suspected or confirmed release to the department of ecology as required under WAC 173-360A-0700 and 173-360A-0750.

(3) To obtain financial assurance funding, a financial assurance request form must be filed with the agency after initial reporting to department of ecology. An access agreement from the owner of the property where the petroleum underground storage tank is located is required as part of the financial assurance request form.

(4) In a situation where a federal, state, or tribal agency has responded to the release, this information must be included in the financial assurance request.

(5) The agency will open a financial assurance request case. The agency will conduct a review to determine if the release meets conditions for coverage and whether coverage is for release after enrollment or for release prior to enrollment.

(6) The agency will notify the enrollee that the financial assurance request has been accepted and a FA project manager and site manager have been assigned.

(7) The remedial work conducted will meet the substantive and timing requirements of WAC 173-340-450 Releases from regulated underground storage tank systems.

(8) Once a no further action letter is issued by the agency's technical assistance program for the release from the enrolled petroleum underground storage tank, the financial assurance request is considered finished and funding will no longer be available.

(9) The owner or operator must accept the schedule and milestones created by the agency to maintain coverage for the release. Failure to accept the schedule and milestones set by the agency will result in cancellation of enrollment and ineligibility of the release to qualify for financial assurance funds.

(10) The owner or operator must provide access for the agency to the property where the enrolled petroleum underground storage tank is located. Failure to provide an access agreement for the property will

result in cancellation of enrollment and ineligibility of the release to qualify for financial assurance funds.

(11) To address the release from an enrolled petroleum underground storage tank, the agency may need access and an agreement for the agency to conduct remedial actions on neighboring property not owned by the owner or operator. The agency will ask for an access agreement, including an agreement to allow for remedial actions. If access and/or an agreement to allow for remedial actions is denied, the agency will limit remediation to the property where the enrolled petroleum underground storage tank is located. Once that remediation is completed and a no further action letter is issued by the agency's technical assistance program, financial assurance funds will no longer be available.

NEW SECTION

WAC 374-10-080 Eligible third-party claims. (1) A third-party claim relating to a release prior to enrollment from a petroleum underground storage tank will not be eligible for funds under this program. The owner or operator of an enrolled tank or a third party have the burden to show the release occurred post enrollment.

(2) For a third-party property claim to be eligible, the following requirements must be met:

(a) If applicable, the third party must consent to property access and sign the access agreement.

(b) If applicable, the third party must allow remediation work to occur on their property.

(c) An agreement that the agency may conduct an audit of any claim honored by the agency and that the third party will reimburse the agency for any disallowance of costs occasioned by such an audit. The third party must also agree to retain all records pertaining to the claim for a period determined by the agency, of at least three years after final payment on the claim, and to provide the records to the agency upon request. The three-year period shall be extended until the completion of any audit in progress.

(3) A financial assurance third-party request form must be submitted before the release receives a no further action letter from the agency's technical assistance program.

(4) After submittal of a financial assurance third-party request form, the agency will send notification of approval or denial of the request.

(a) The third party must report any legal claims against the owner or operator of the enrolled petroleum tank system when filing for financial assurance coverage. All legal claims for costs and damages resulting from a release from the enrolled tank must be completed or settled prior to seeking financial assurance coverage.

(b) The third party shall make available to the agency upon request all documentation of property damage necessary to prove that the property damage is reimbursable. This includes, but is not limited to, pleadings, or any other documents filed in any lawsuit for property damage or bodily injury.

(c) The third party shall make available to the agency upon request documentation of bodily injury to include medical reports, statements, investigative reports, or certifications from licensed

health professionals necessary to prove that third-party bodily injuries are reimbursable.

(5) Any covered third-party property damage shall be based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is destroyed because of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the destroyed property.

NEW SECTION

WAC 374-10-090 Eligible and ineligible costs. (1) Eligible and ineligible costs are listed in the program guidance.

(2) Eligible costs covered by the financial assurance program include, but are not limited to, the following:

(a) Remedial action performed by an agency prime consultant for releases from a petroleum underground storage tank and its system. Actions may include excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release, as well as proper disposal of nonrepairable petroleum underground storage tank or its system.

(b) Remedial action which will be compliant with state, federal, or tribal cleanup standards.

(c) Remedial action costs incurred by state, federal, or tribal agencies in responding to the release from the enrolled petroleum underground storage tank.

(d) Testing, monitoring, and assessments.

(e) Third-party costs as defined in WAC 374-10-080.

(f) Necessary infrastructure replacement costs.

(i) Replacement costs for a new petroleum underground storage tank or its system that meets the current standards for such tank systems, as specified in program guidance.

(ii) The costs for replacing certain equipment related to the operation of the affected petroleum tank system, including the fuel dispenser and pipe system.

(iii) Replacement of some surface features required by municipal law, including surface asphalt and concrete, curbs or lanes, and stormwater drainage.

(3) Ineligible costs include, but are not limited to, the following:

(a) Penalties or fines assessed by other state, federal, or tribal agencies.

(b) Third-party cost recovery under MTCA, CERCLA, and lawsuits that is not permitted by WAC 374-10-080 or not an eligible cost reimbursement for a state, federal, or tribal agency.

(c) Remedial action that exceeds cleanup levels required by MTCA or federal or tribal standards.

(d) Lost business income resulting from closures related to the release or remediation.

(e) Cleanup of contamination from other sources, unless the agency determines that it is necessary to complete remediation of a release from an enrolled petroleum underground storage tank.

(f) Legal defense costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(i) The United States, Washington state, or a political subdivision of the United States or Washington state to require remedial action or to recover costs of remedial action; or

(ii) A third party for bodily injury or property damage caused by an accidental release.

NEW SECTION

WAC 374-10-100 Agency-led remediation. (1) The owner or operator of a nonenrolled petroleum underground storage tank system, or owner of a property with either a nonenrolled petroleum underground storage tank system or a past release that has been reported to the department of ecology, may submit an agency-led remediation request. An agency-led remediation project will involve the agency conducting remediation related to a release from the petroleum underground storage tank. The agency may seek cost recovery following completion of the remedial actions. This is intended to address properties without viable funding sources to address contamination where the contamination may be impacting drinking water or vulnerable communities.

(2) To qualify for an agency-led remediation request, the owner or operator, or owner of the property, must show the following:

(a) Per RCW 70A.545.060 (1)(a), the release occurs in an area of risk for drinking water impacts or where addressing the release is necessary to equitably protect human health and the environment in communities that have been marginalized, overburdened, and underserved;

(b) The owner or operator, or owner of the property where the petroleum underground storage tank is located, has provided consent for the agency to:

(i) Conduct the remedial actions;

(ii) Enter upon the real property to conduct the remedial actions; and

(iii) Recover the costs of the remedial actions from the owner or operator or potentially liable persons; and

(c) The owner of the property consents to the agency's use of a lien as detailed in RCW 70A.545.070 on the property.

(3) The agency may accept an agency-led remediation request per the director's discretion, subject to program funding availability.

NEW SECTION

WAC 374-10-110 Cost recovery. The agency may recover the costs of remedial actions conducted under the program by use of cost recovery options in the Model Toxics Control Act, RCW 70A.305.080, 70A.545.060, and 70A.545.070, or other applicable federal or state laws.

NEW SECTION

WAC 374-10-120 Overpayments. (1) The agency may require an owner or operator to return any cost overpayment made by the program. Overpayments may occur if:

(a) Another party, such as an insurer, has paid costs prior to payments from the program; or

(b) The agency discovers an accidental overpayment has been made to an owner or operator for any reason.

(2) If a cost overpayment is not paid upon demand, the agency may pursue the following actions:

(a) Collections. The agency may request cost recovery with a debt collection agency.

(b) Lien filing. The agency may seek cost recovery of remedial action costs from any liable person by filing a lien on the petroleum underground storage tank facility as authorized under RCW 70A.545.070.

(c) Civil action. The agency may request the attorney general office to commence a civil action against the owner or operator in superior court to recover costs and the agency's administrative and legal expenses to pursue recovery.

NEW SECTION

WAC 374-10-130 Fraud and material omissions. (1) The agency may seek return of payments made if:

(a) Any party misrepresents or omits material facts relevant to the agency's determination of coverage; or

(b) Any party, with intent to defraud, initiates a financial assurance request or issues or approves an invoice or request for payment, with knowledge that the information submitted is false in whole or in part.

(2) If the agency determines that any party has committed program fraud or omitted material information relevant to financial assurance program enrollment or payment of remediation costs, the agency may request the attorney general office to:

(a) File a lien on the underground storage tank facility or other property owned by the owner or operator to recover the amount of payment that occurred as a result of the fraud or omission;

(b) Commence a civil action against the person in superior court; or

(c) Recover the overpayment costs and other expenses as determined by a court.

(3) If the agency determines that the owner or operator of an enrolled petroleum storage tank omitted material facts or intentionally defrauded the program, it will cancel enrollment of the affected petroleum tank, and any person or party determined to have committed program fraud may be prohibited from applying for future enrollment. The agency will report instances of fraud to the appropriate authorities including criminal referral for prosecution.

(4) Any party participating in the program must agree to allow the agency to conduct financial audits related to the receipt of payments intended for remedial actions.

NEW SECTION

WAC 374-10-140 Review of initial agency decisions. (1) Review of the following initial agency decisions may be requested, in writing, to the agency's legislative and policy manager:

(a) Denial of program eligibility;

(b) Cancellation of enrollment in the program or denial of reenrollment;

(c) Denial of eligibility for payment under the program;

(d) Amount of payment allowed for remedial actions;

(e) Eligibility and amount of payment allowed for a third-party claim;

(f) Agency requests for costs repayment under WAC 374-10-120; or

(g) Other agency program decisions detailed in the program policy guidance.

(2) Review of these initial agency decisions may be requested within 45 days by an applicant, the owner or operator of an enrolled petroleum underground storage tank system, or a third-party claimant.

(3) The written request must specify the basis for review and meet the agency's procedures outlined in the program policy guidance.

(4) If the applicant or participant seeks to appeal the final agency determination, the applicant or participant has 45 days after the agency determination to submit a written request to the director for an adjudicative hearing under chapter 34.05 RCW.

WSR 24-12-088
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed June 5, 2024, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-044.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is amending five sections in chapter 388-14A WAC to reflect that the department of children, youth, and families (DCYF) administers the state's foster care program, not DSHS, and that the division of child support (DCS) provides child support services for children in residential care when DCYF refers the case to DCS. WAC 388-14A-1025 What are the responsibilities of the division of child support?, 388-14A-2105 Basic confidentiality rules for the division of child support, 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?, 388-14A-8110 What happens to the money if current support is higher than the cost of care?, and 388-14A-8120 Are there special rules for collection in foster care cases?

Hearing Location(s): On July 10, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of Intended Adoption: Not before July 11, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on June 5, 2024, by 5:00 p.m. on July 10, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by 5:00 p.m. on June 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending WAC 388-14A-1025, 388-14A-2105, 388-14A-4111, 388-14A-8110, and 388-14A-8120, related to foster care cases.

This proposal will:

(1) Make technical updates to WAC 388-14A-1025, 388-14A-4111, 388-14A-8110, and 388-14A-8120 to reflect that DCYF now administers the foster care program for Washington, not DSHS.

(2) Make additional amendments to WAC 388-14A-1025 and 388-14A-8120 to align with DCYF's WAC chapters and policy regarding when DCS provides child support services for a child in residential care. As currently written, both sections say DCS provides child support services whenever a child is in residential care. That is inaccurate. Based on clarification provided to states by the federal administration for children and families' children's bureau and office of child support services, the agency administering the state's foster care program has the authority to determine when it is appropriate to send a referral for a child in residential care to the state's child support program. DCYF changed their criteria and sends far fewer referrals than they previously did. Amendment is more appropriate than

repeal because DCS must maintain the legal framework to provide child support services when requested by DCYF.

(3) Amend WAC 388-14A-2105 to strike subsection (11) because it is obsolete. Both DCS and the community services division refer parents' requests for the whereabouts of a child receiving foster care services to the economic services administration (ESA) public disclosure unit. Subsection (11) is no longer accurate.

(4) Make other technical edits in line with the office of the code reviser's drafting guidelines.

Reasons Supporting Proposal: This rule making ensures DCS and DCYF WAC chapters and policies align and provides correct and current information to the general public.

Statutory Authority for Adoption: RCW 26.09.105, 26.18.170, 26.23.050, 26.23.110, 26.23.120, 34.05.020, 34.05.060, 74.08.090, 74.20.040, 74.20A.055, and 74.20A.056.

Statute Being Implemented: RCW 26.09.105, 26.18.170, 26.23.050, 26.23.110, 26.23.120, 74.20.330, 74.20A.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, ESA, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Monica Turnbaugh, Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5339.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Although these rules meet the definition of significant legislative rules under RCW 34.05.328(5), the requirement for a cost-benefit analysis does not apply because they adopt or incorporate by reference rules of another Washington state agency (RCW 34.05.328 (5)(b)(ii)) and they are DSHS rules relating only to liability for care of dependents (RCW 34.05.328 (5)(b)(vii)).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: This proposal does not affect small businesses. This rule is exempt under RCW 34.05.328 (5)(b)(vii) Rules of the department of social and health services … concerning liability for care of dependents.

Scope of exemption for rule proposal:

Is fully exempt.

June 3, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5036.2

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

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) The department of children, youth, and families:

(i) Provides residential care (foster care) for a dependent child; and

(ii) Refers a noncustodial parent (NCP) or parents (NCPs) to DCS for DCS to provide support enforcement services for the child in residential care;

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

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

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

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

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

(2) DCS takes action under chapters 26.09, 26.18, 26.19, 26.21A, 26.23, 26.26A, 26.26B, 74.20, 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 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.

(9) Based on changes in federal statutes and regulations, DCS establishes or changes the rules regarding its responsibilities when acting as either the initiating agency or responding agency in an intergovernmental child support case.

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

WAC 388-14A-2105 Basic confidentiality rules for the division of child support. (1) Under RCW 26.23.120, all information and records, concerning persons who owe a support obligation or for whom the division of child support (DCS) provides support enforcement services, are private and confidential.

(2) DCS discloses information and records only to a person or entity listed in this section or in RCW 26.23.120, and only for a specific purpose allowed by state or federal law. See WAC 388-14A-7500 regarding disclosure of personal information in the context of referrals under the Uniform Interstate Family Support Act (UIFSA).

(3) DCS may disclose information to:

(a) The person who is the subject of the information or records((~~,~~)) unless the information or records are exempt under RCW ((~~42.17.310~~)) 42.56.210;

(b) Local, state, and federal government agencies for support enforcement and related purposes;

(c) A party to a judicial proceeding or a hearing under chapter 34.05 RCW, if the superior court judge or administrative law judge (ALJ) enters an order to disclose. The judge or presiding officer must base the order on a written finding that the need for the information outweighs any reason for maintaining privacy and confidentiality;

(d) A party under contract with DCS, including a federally recognized Indian tribe, if disclosure is for support enforcement and related purposes;

(e) A person or entity, including a federally recognized Indian tribe, when disclosure is necessary to the administration of the child support program or the performance of DCS functions and duties under state and federal law;

(f) A person, representative, or entity if the person who is the subject of the information and records consents, in writing, to disclosure;

(g) The office of administrative hearings or the office of appeals for administration of the hearing process under chapter 34.05 RCW. The ALJ or review judge must:

(i) Not include the address of either party in an administrative order, or disclose a party's address to the other party;

(ii) State in support orders that the address is known by the Washington state support registry; and

(iii) Inform the parties they may obtain the address by submitting a request for disclosure to DCS under WAC 388-14A-2110(2).

(4) DCS may publish information about a noncustodial parent (NCP) for locate and enforcement purposes.

(5) WAC 388-14A-2114(1) sets out the rules for disclosure of address, employment, or other information regarding the custodial parent (CP) or the children in response to a public disclosure request.

(6) WAC 388-14A-2114(2) sets out the rules for disclosure of address, employment, or other information regarding the NCP in response to a public disclosure request.

(7) DCS may disclose the Social Security number of a dependent child to the ((~~noncustodial parent (~~)) NCP ((~~)~~)) to enable the NCP to claim the dependency exemption as authorized by the Internal Revenue Service.

(8) DCS may disclose financial records of an individual obtained from a financial institution only for the purpose of, and to the extent necessary, to establish, modify, or enforce a child support obligation of that individual.

(9) Except as provided elsewhere in chapter 388-14A WAC, chapter 388-01 WAC governs the process of requesting and disclosing information and records.

(10) DCS must take timely action on requests for disclosure. DCS must respond in writing within five working days of receipt of the request.

(11) ((~~If a child is receiving foster care services, the parent(s) must contact their local community services office for disclosure of the child's address information.~~

~~(12)~~)) The rules of confidentiality and penalties for misuse of information and reports that apply to a IV-D agency employee, also apply to a person who receives information under this section.

((~~(13)~~)) (12) Nothing in these rules:

(a) Prevents DCS from disclosing information and records when such disclosure is necessary to the performance of its duties and functions as provided by state and federal law;

(b) Requires DCS to disclose information and records obtained from a confidential source.

((~~(14)~~)) (13) DCS cannot provide copies of the confidential information form contained in court orders. You must go to court to get access to the confidential information form. DCS may disclose information contained within the confidential information form if disclosure is authorized under RCW 26.23.120, chapter 388-01 ((~~WAC~~)), or ((~~chapter~~)) 388-14A WAC.

((~~(15)~~)) (14) DCS may provide a Support Order Summary to the parties to an administrative support order under WAC 388-14A-2116.

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation? The division of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170, and 26.23.110 if one or more of the following apply:

(1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;

(2) The department of social and health services is not paying public assistance ((~~or providing foster care services~~));

(3) The department of children, youth, and families is not providing services for a child in residential care (foster care);

(4) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;

((~~(4)~~)) (5) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;

((~~(5)~~)) (6) The party is requesting reimbursement of the obligated parent's proportionate share of medical premium costs, and the obligated parent is currently providing accessible health care coverage for the child;

((~~(6)~~)) (7) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2)(d);

((~~(7)~~)) (8) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;

((~~(8)~~)) (9) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;

((~~(9)~~)) (10) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;

((~~(10)~~)) (11) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;

((~~(11)~~)) (12) DCS denies the application under WAC 388-14A-2020;

((~~(12)~~)) (13) The party requesting enforcement of the medical support obligation does not provide proof of payment, any required forms, ((~~and/~~)) or the declaration under penalty of perjury required under WAC 388-14A-3312;

((~~(13)~~)) (14) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

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

WAC 388-14A-8110 What happens to the money if current support is higher than the cost of care? (1) When the division of child support (DCS) collects child support ((~~from the parent(s) of a child in~~)) on a foster care case, DCS sends the amounts collected to the ((~~division of child and family services (DCFS)~~)) department of children, youth, and families (DCYF), which administers foster care funds.

(2) ((~~DCFS and its office of accounting services (OAS) apply~~)) DCYF applies child support payments collected by DCS((~~.~~

~~(3) DCFS and/or OAS~~)) and deposits in a trust account for the child any child support payments which ((~~they don't~~)) it doesn't use to reimburse foster care expenses.

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

WAC 388-14A-8120 Are there special rules for collection in foster care cases? (1) ((~~Whenever the department provides residential care ("foster care") for a dependent child or children, the~~)) The noncustodial parent (NCP) or parents (NCPs) satisfy their obligation to support the child or children by paying to the ((~~department~~)) division of child support (DCS) the amount specified in a court order or administrative order, if a support order exists((~~.~~)), when:

(a) The department of children, youth, and families (DCYF) provides residential care (foster care) for a dependent child; and

(b) DCYF refers the NCP or NCPs to DCS for DCS to take action.

(2) ((~~The division of child support (~~)) DCS ((~~)~~)) takes action under the provisions of chapters 74.20 and 74.20A RCW and this chapter to enforce and collect support obligations owed for children receiving foster care services.

(3) If, during a month when a child is in foster care, the NCP is the "head of household" with other dependent children in the home, DCS does not collect and retain a support payment if:

(a) The household's income is below the need standard for temporary assistance for needy families (TANF) ((~~(see~~)) WAC 388-478-0015((~~)~~)); or

(b) Collection of support would reduce the household's income below the need standard.

(4) The NCP's support obligation for the child or children in foster care continues to accrue during any month DCS is prevented from collecting and retaining support payments under this section.

(5) If ((~~the department~~)) DCS has collected support payments from the head of household during the months which qualify under ((~~section (3)~~)) subsection (3) of this section, the NCP may request a conference board in accordance with WAC 388-14A-6400.

(6) The NCP must prove at the conference board that the income of the household was below or was reduced below the need standard during the months DCS collected payments.

(7) If the conference board determines that DCS has collected support payments from the head of household that the department or DCYF is not entitled to retain according to this section, DCS must promptly refund, without interest, any support payments, or the portion of a payment which reduced the income of the household below the need standard.

(8) This section does not apply to payments collected prior to August 23, 1983.

WSR 24-12-089
PROPOSED RULES
OLYMPIC REGION
CLEAN AIR AGENCY
[Filed June 5, 2024, 11:39 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations: Rule 1.11 Federal Regulation Reference Date and Rule 1.12 State Regulations Reference Date.

Hearing Location(s): On July 10, 2024, at 10:00 a.m., at Olympic Region Clean Air Agency, 2940 Limited Lane N.W., Olympia, WA 98502. In addition to attending the hearing in person, remote participation via Zoom is also an option. Please see our website for login information www.orcaa.org/about/board-of-directors.

Date of Intended Adoption: July 10, 2024.

Submit Written Comments to: Mike Shults, 2940 Limited Lane N.W., email mike.shults@orcaa.org, fax 360-491-6308, beginning 8:00 a.m., June 10, 2024, by 10:00 a.m., July 10, 2024.

Assistance for Persons with Disabilities: Contact Dan Nelson, phone 360-539-7610, ext. 111, fax 360-491-6308, email dan.nelson@orcaa.org, by 4:30 p.m., July 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA proposes to update the effective date of the federal regulations and state regulations that were previously adopted by ORCAA. Currently, where federal and state rules are referenced in ORCAA regulations, the effective date of the regulations are July 1, 2023. ORCAA intends to update the effective date annually. This proposal would change the reference date to July 1, 2024.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Mike Shults, 2940 Limited Lane N.W., Olympia, 360-539-7610, ext. 113; Implementation and Enforcement: Jeff C. Johnston, Ph.D., 2940 Limited Lane N.W., Olympia, 360-539-7610, ext. 100.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 applies to state government. It does not apply to local air agencies per RCW 70A.15.2040.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW applies to "rules adopted by state agencies." RCW 70A.15.2040(1) states: "An air pollution control authority shall not be deemed to be a state agency." ORCAA is an air pollution control authority.

Scope of exemption for rule proposal:

Is fully exempt.

June 5, 2024
Jeff C. Johnston, Ph.D.
Executive Director

AMENDATORY SECTION

RULE 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((~~3~~))4.

AMENDATORY SECTION

RULE 1.12 STATE REGULATION REFERENCE DATE

Whenever state regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((~~3~~))4.