



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Social and Health Services, Children's Administration

- Preproposal Statement of Inquiry was filed as WSR: 15-11-090 ; or
- Expedited Rule Making--Proposed notice was filed as WSR: ___ ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR:
- Continuance of WSR:

Title of rule and other identifying information: (Describe Subject)

The department is proposing to repeal WAC 388-70-615 "Local Indian child welfare advisory committee – Subcommittees" and to amend the following WAC sections: WAC 388-70-091 "Foster care planning for Indian children – Definitions", WAC 388-70-092 "Foster care for Indian children – Tribal sovereignty", WAC 388-70-093 Foster care for Indian children – Services", WAC 388-70-095 "Foster care for Indian children – Serious injury, death, abandonment, child abuse, neglect, incarceration", WAC 388-70-450 "Adoptive planning for Indian children by department staff", WAC 388-70-600 "Local Indian child welfare advisory committee – Purpose", WAC 388-70-610 "Local Indian child welfare advisory committee – Membership", WAC 388-70-620 "Local Indian child welfare advisory committee – Functions", WAC 388-70-630 "Local Indian child welfare advisory committee – Meetings", and WAC 388-70-640 "Local Indian child welfare advisory committee – Confidentiality".

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
Olympia, WA 98504

Public parking at 11th and Jefferson. A map is available at:
<https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>

Date: May 24, 2016 Time: 10:00 a.m.

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850
Olympia, WA 98504
e-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
fax: (360) 664-6185
by: 5:00 p.m. May 24, 2016

Assistance for persons with disabilities: Contact:
Jeff Kildahl, DSHS Rules Consultant by May 10, 2016
Phone: (360) 664-6092 or TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov

Date of intended adoption: Not earlier than May 25, 2016
(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The department is proposing these changes to match requirements in chapter 13.38 RCW, the Washington State Indian Child Welfare Act, and the federal Indian Child Welfare Act, 25 U.S.C. Chapter 21, as well as to reflect changes in Children's Administration policy. Currently, the definition of Indian child and the application of the Local Indian Child Welfare Advisory Committee (LICWAC) processes are contrary to state and federal law. Updates to each of these WAC sections will harmonize the WAC sections with state and federal law.

Reasons supporting proposal: See purpose statement above.

Statutory authority for adoption:

RCW 74.08.090

Statute being implemented:

Chapter 13.38 RCW, 25 U.S.C. Chapter 21

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE

April 5, 2016

NAME (type or print)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 12, 2016

TIME: 8:46 AM

WSR 16-09-025

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Department of Social and Health Services

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Juliette Knight	DSHS Headquarters, 1115 Washington St SE, Olympia, WA 98504	(360) 902-7578
Implementation:	Juliette Knight	DSHS Headquarters, 1115 Washington St SE, Olympia WA 98504	(360) 902-7578
Enforcement:	Juliette Knight	DSHS Headquarters, 1115 Washington St SE, Olympia WA 98504	(360) 902-7578

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under Laws of 2012, ch. 210, § 1?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:
Address:
Phone: ()
Fax: ()
e-mail

No. Explain why no statement was prepared.

The proposed rules are exempt from preparing a small business economic impact statement under RCW 19.85.025(3) and RCW 34.05.310(4)(c), and align language with federal and state Indian child welfare laws.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:

Phone: ()
fax: ()
e-mail:

No: Please explain:

A cost-benefit analysis is not required under RCW 34.05.328(5)(b)(iii), rules adopting or incorporating by reference without material change federal statutes or regulations and Washington state statutes. The proposed rules align language with the federal Indian Child Welfare Act, 25 U.S.C. Chapter 21, and chapter 13.38 RCW, the Washington State Indian Child Welfare Act

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-091 Foster care planning for Indian children—Definitions. ((For the purposes of these rules, the term "Indian" includes the following groups:

(1) ~~An enrolled Indian:~~

(a) ~~Any person who is enrolled or eligible for enrollment in a recognized tribe.~~

(b) ~~Any person determined, or eligible to be found, to be an Indian by the Secretary of the Interior.~~

(c) ~~An Eskimo, Aleut or other Alaskan native.~~

(2) ~~A Canadian Indian: Any person who is a member of a treaty tribe, Metis community or nonstatus Indian community from Canada.~~

(3) ~~An unenrolled Indian: A person considered to be an Indian by a federally or nonfederally recognized Indian tribe or urban Indian/Alaskan native community organization.)~~

For the purposes of WACs 388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640, the term "Indian child" is defined as any unmarried and unemancipated Indian person who is under age eighteen and is one of the following:

(1) A member of an Indian tribe; or

(2) Is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-092 Foster care for Indian children—Tribal sovereignty. Neither the licensing of Indian foster homes nor the placement and supervision of Indian children within the ((~~exterior~~)) boundaries of an Indian reservation, shall in any way abridge the sovereignty of an Indian nation or tribe nor shall compliance with these rules and regulations be deemed a relinquishment of sovereign authority by an Indian nation or tribe or by the state of Washington.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-093 Foster care for Indian children—Services. Documented efforts shall be made to avoid separating the Indian child from his or her parents, relatives, tribe or cultural heritage. Consequently:

(1) When a family identifies Indian ancestry under the federal and state Indian child welfare acts, the children's administration (CA) caseworker has fifteen calendar days, or ten business days, from the date of identification to complete a family ancestry chart and begin the membership inquiry process. A copy of the family ancestry chart will be retained in the child's most current case file volume.

(2) CA staff will contact all identified federally recognized tribes ((~~F~~)) in the case of Indian children being placed in foster care by the department or for whom the department has supervisory responsi-

bility(~~(, the local Indian child welfare advisory committee, predesignated by a tribal council, or appropriate urban Indian organization shall be contacted. Members of that committee will serve as resource persons for the purposes of cooperative planning and aid in placement)~~)).

~~((+2))~~ (3) If requested by a federally recognized tribe, or if a federally recognized tribe is unavailable the local Indian child welfare advisory committees (LICWAC) as defined under WAC 388-70-600 will serve as resource persons for the purposes of cooperative planning and aid in placement.

~~(4)~~ The resources of the tribal government, ~~((department and))~~ the Indian community, and the department shall be used to locate the child's parents and relatives to assist in locating possible placement resources, and to assist in the development of a plan to overcome the problem that brought the child to the attention of the authorities, ~~((and/))~~ or the department, or both the authorities and the department.

~~((+3))~~ (5) In planning foster care placements for Indian children, ~~((demonstrable consideration shall be given to tribal membership, tribal culture and Indian religions))~~ CA will follow the federal and state Indian child welfare acts with regard to placement preference. The case record shall document the reasons and circumstances of casework decisions and consideration in those regards.

~~((+4))~~ (6) ~~((The following resources for foster home placement of Indian children will be explored and followed in the following order: Relatives' homes, homes of other Indian families of same tribe, other Indian foster parents and non Indian foster homes specifically recruited and trained in cooperation with the local Indian child welfare advisory committee to meet the special needs of Indian foster children and in the geographic proximity that will insure continuation of the parent child relationship. The training of non Indian foster parents shall be designed and delivered in cooperation with the above committee and/or persons designated by the committee.~~

(5) For each Indian child who will be in care for more than 30 days, including those for whom adoption is planned, the ESSO shall make documented effort to complete two copies of the "family ancestry chart" (except in those cases where parents specifically indicate in writing they do not want the child enrolled). One copy will be retained in the child's file; the other will be forwarded to the bureau of Indian affairs office or the department of Indian affairs agency in Canada serving that child's tribe or band. The BIA of the department of Indian affairs agency will review the chart for possible enrollment eligibility in conjunction with the enrollment committee of the appropriate tribe or urban Indian community.

(6) The ESSO shall develop its social resources and staff training programs designed to meet the special needs of Indian children through coordination with tribal, Indian health service, bureau of Indian affairs social service staff, appropriate urban Indian and Alaskan native consultants, national, state and local Indian welfare organizations and ESSO child welfare advisory committees.) CA, in partnership with federally recognized tribes and CA contracted agencies, will develop training for staff and caregivers designed to meet the needs of Indian children and their families. CA may also partner with urban Indian organizations, CA LICWACs, national, state and local Indian child welfare organizations, and Native American/Alaskan Native consultants.

(7) The ~~((ESSO))~~ CA shall make diligent and ~~((demonstrable))~~ ongoing efforts to recruit facilities and/or homes particularly capable of

meeting the ((special)) needs of Indian children ((with the assistance of the local Indian child welfare advisory committees)).

AMENDATORY SECTION (Amending Order 1255, filed 12/1/77)

WAC 388-70-095 ~~((Foster care for Indian children--))~~ **Serious injury, death, abandonment, child abuse, neglect, incarceration of an Indian child.** When an Indian child in ~~((foster))~~ the care and custody of the department dies, is seriously injured, abandoned or incarcerated, in addition to other appropriate notifications, the department shall ~~((promptly advise the ESSO Indian child welfare advisory committee and appropriate tribal council))~~ notify the federally recognized tribe or tribes within twenty-four hours. ~~((WAC 388-15-131(4) provides for notification about child abuse/neglect incidents.))~~

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-450 **Adoptive planning for Indian children by department staff.** (1) ~~((Definitions: For the purposes of these rules the term "Indian" includes the following groups:~~

~~(a) Enrolled Indian~~

~~(i) Any person who is enrolled or eligible for enrollment in a recognized tribe.~~

~~(ii) Any person determined, or eligible to be found, to be an Indian by the secretary of the interior.~~

~~(iii) An Eskimo, Aleut or other Alaskan native.~~

~~(b) Canadian Indian: A person who is a member of a treaty tribe, Metis community or nonstatus Indian community from Canada.~~

~~(c) Unenrolled Indian: A person considered to be an Indian by a federally or nonfederally recognized tribe or urban Indian/Alaskan native community organization.)~~ In planning adoptive or pre-adoptive placements for Indian children under WAC 388-70-091, CA will follow the federal and state Indian child welfare acts with regard to placement preference.

(2) ~~((An adoptive family shall be considered Indian if one or both parents are Indian by the above definitions.))~~ An adoptive family shall be considered Indian if one or both parents is:

(a) A member of a federally recognized tribe; or

(b) An Alaska Native and a member of a Regional Corporation as defined in 43 U.S.Csec. 1606.

(3) In adoptive planning for Indian children, the unique ~~((tribal, cultural and religious sovereignty of Indian nations,))~~ cultural, religious, and sovereignty of federally recognized tribes and communities shall be recognized. When consistent with the wishes of the biological parents and/or the child, the adoption of Indian children by Indian families is the primary goal.

(4) ~~((Standards implementing the policy are:~~

~~(a) Adoption exchange. In the referrals for an Indian child, adoptive homes having the following characteristics shall be given~~

preference in the following order, each category being allowed 30 days before proceeding to the next.

~~(i) An Indian family of the same tribe as the child.~~

~~(ii) A Washington Indian family considering tribal cultural differences.~~

~~(iii) An Indian family from elsewhere in the United States or Canada through the adoption resource exchange of North America. Attention shall be given to matching the child's tribal culture to that of the adoptive family.~~

~~(iv) Any other family which can provide a suitable home to an Indian child, as well as instill pride and understanding in the child's tribal and cultural heritage.~~

~~(b) Foster parent adoptions: As a part of the total evaluation for approving a foster parent adoption of an Indian child, ESSO service staff shall document the foster family's past performance and future commitment in exposing the child to its Indian tribal and cultural heritage. The child's wish to be involved in his Indian culture shall be considered.)~~ As a part of the total evaluation for approving a foster parent adoption of an Indian child, CA staff will document the foster family's past performance and future commitment in exposing the child to their Indian heritage. The child's wish to be involved in his or her Indian culture shall be considered.

~~((e)) (5) When an Indian child, in the custody of an out-of-state agency, is referred for potential adoptive parents residing in Washington, ((documentation shall be obtained that assures the department's standards for planning for Indian children have been complied with.))~~ CA will follow the interstate compact and placement of Indian children policy of Washington state.

(6) When an Indian child, in the care and custody of CA, is referred for adoption out of Washington, CA will follow the interstate compact and placement of Indian children policy of Washington state.

(7) In the event of an international adoption CA will follow policy and ensure that placement preferences are followed per the federal and state Indian child welfare acts.

~~((5)) (8) ((Local))~~ CA staff ((shall)) may consult with ((an)) a local Indian child welfare advisory committee in planning for adoptive placement of Indian children when a federally recognized tribe has chosen not to be involved.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-600 Local Indian child welfare advisory committee—

Purpose. The intent of WAC ~~((388-70-096))~~ 388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640 ~~((is))~~ are to ensure protection of the Indian identity of Indian children, their rights as Indian children, and the maximum utilization of available Indian resources for Indian children. To ensure the realization of this intent, information about each current and future case involving Indian children for whom the department of social and health services has a responsibility shall be referred to a local Indian child welfare advisory committee on an ongoing basis when a federally recognized tribe has not responded, is unavailable, or requests LICWAC

involvement according to procedures which recognize the privacy rights of the families.

The purposes of local Indian child welfare advisory committees are:

(1) To promote (~~(relevant)~~) social service planning for Indian children.

(2) To encourage the preservation of the Indian family, tribe, heritage, and identity of each Indian child served by the department of social and health services.

(3) To assist in obtaining participation by representatives of tribal governments and Indian organizations in departmental planning for Indian children for whom the department has a responsibility.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-610 Local Indian child welfare advisory committee—Membership. Local Indian child welfare advisory committees shall be established within each region. The number and locations of the local committees shall be mutually determined by the Indian tribal governments and urban Indian organizations served by that region and the DSHS regional administrator.

(1) The committee shall consist of representatives designated by tribal government and urban Indian organizations. The regional administrator shall appoint committee members from among those individuals designated by Indian authorities. These members should be familiar with and knowledgeable about the needs of children in general as well as the particular needs of Indian children residing in the service area.

(2) The committee may also include bureau of Indian affairs staff, (~~(and/or)~~) Indian health service staff (~~(if approved by participating tribal councils and urban Indian organizations)~~), and other community members.

(3) The (~~(DSHS)~~) CA regional administrator (~~(and/or the ESSO administrator shall)~~) may appoint a member of his or her child welfare (~~(supervisory)~~) staff as a liaison member of the committee.

(4) The local Indian child welfare advisory committee is an ad hoc advisory committee not specifically authorized by statute. As such its members are not entitled to per diem and travel expenses for the performance of advisory committee functions. (~~(This rule shall not be construed, however, to prohibit expense payments to members who are otherwise qualified for and perform services compensable under other programs such as the volunteer programs.)~~)

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-620 Local Indian child welfare advisory committee—Functions. (~~((1))~~) The functions of the local Indian child welfare advisory committee are to:

(~~((a))~~) (1) (~~(Assistance to)~~) Assist DSHS staff in cooperative planning for Indian children.

~~((b) Consultation to DSHS staff regarding the provision of adoption, foster care and child protective services on behalf of Indian children.~~

~~(c) Reviewing the situations of Indian children.))~~

(2) Consult DSHS staff on behalf of Indian children, regarding the provision of the child's safety, well-being, and permanency on behalf of Indian children.

~~((d) Assisting in the implementation of recommended plans.~~

~~(e) Assisting in the recruitment of and making recommendations regarding the licensing of foster and adoptive homes for Indian children and providing culturally relevant services to Indian children.))~~

(3) Assist in providing culturally relevant services to Indian children; and

~~((f)) (4) Make requests to the ((ESSO)) CA administrator to initiate reviews of casework decisions that the committee believes to be detrimental to the best interests of Indian children.~~

~~((g) Acts in an advisory capacity to the regional administrator and ESSO administrator regarding the department's implementation and monitoring of the rules related to foster care, child protection, and adoption services to Indian children and their families.))~~

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-630 Local Indian child welfare advisory committee—Meetings. Each committee and the ~~((regional administrator and/or ESSO administrator))~~ CA local Indian child welfare advisory committee staff liaison will mutually agree as to time, place and frequency and conduct of official committee meetings.

AMENDATORY SECTION (Amending WSR 89-05-063, filed 2/15/89)

WAC 388-70-640 Local Indian child welfare advisory committee—Confidentiality. The members of the local Indian child welfare advisory committee shall agree to abide by RCW 74.04.060 and the rules of confidentiality binding the DSHS staff.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-70-615 Local Indian child welfare advisory committee—Subcommittees.