

**WSR 21-21-026**  
**PROPOSED RULES**  
**EASTERN WASHINGTON UNIVERSITY**

[Filed October 11, 2021, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-004.

Title of Rule and Other Identifying Information: WAC 172-108-110 Enforcement of immunization requirements.

Hearing Location(s): On December 7, 2021, at 9:00 a.m., 215A Tawanka Commons, Eastern Washington University (EWU), Main Campus, 526 5th Street, Cheney, WA 99004.

Date of Intended Adoption: December 10, 2021.

Submit Written Comments to: Annika Scharosch, EWU, Main Campus, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by December 7, 2021.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by December 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds a new section regarding the imposition of fines for students for failing to follow EWU's immunization policies and a process for challenging such fines. This was approved in July 2021 as an emergency regulation.

Reasons Supporting Proposal: EWU has adopted a policy requiring students to provide proof of certain immunizations (MMR and COVID-19) or to seek religious or medical waivers. This regulation gives EWU the ability to fine students for not complying with these requirements and provides students with the opportunity to challenge such fines.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Hall, 509-359-6724; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

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. Pursuant to RCW 34.05.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule [rule] pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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).

October 11, 2021  
 Annika Scharosch  
 Associate Vice President

NEW SECTION

**WAC 172-108-110 Enforcement of immunization requirements.** (1) The university may impose a fine on students who fail to provide documentation of an immunization required by the university or obtain a waiver for medical or religious reasons as set forth in EWU Policy 602-02 (Immunizations). The fine may be up to two hundred fifty dollars per term for each academic term a student is enrolled and fails to comply with university requirements. The fine may be waived if the student complies with the immunization requirements within fourteen calendar days from the date notice of the fine is sent to the student as specified below.

(2) The university will provide written notice of the fine to students who fail to comply with the immunization requirements no later than thirty days after the initial date of the academic term. Notice will be sent via email to students' official university emails. Students will be given an opportunity to contest the notice by filing a request for a brief adjudicative hearing within fourteen calendar days of the date when the initial notice is sent to the student's official university email account. To request review of the fine, the student must submit a written request to: Student Rights and Responsibilities, 129 Showalter Hall, Cheney, WA 99004-2496 or via email to srr@ewu.edu. The request must set forth the reasons why the student disagrees with the fine. If a student fails to timely request a brief adjudicative hearing, the fine will become final.

(3) If a student timely files a request for a brief adjudicative hearing, a presiding officer will be appointed and will consider any materials submitted by the student in writing contesting the initial fine. Within ten calendar days of receipt of the request for a hearing, the presiding officer or designee will send an initial order setting forth the officer's decision and the reasons for such decision. The order should also communicate any appeal options available.

(4) The student may appeal the initial order by filing a written appeal with the dean of students within twenty-one calendar days from the date the initial order was sent to their official university email account. To request an appeal, the student must submit a written request to: Dean of Students, 301 Pence Union Building, Cheney, WA 99004-2496 or via email to dos@ewu.edu. The appeal must set forth the reasons why the student believes the initial order was incorrect. If a student fails to timely appeal, the initial order will be final.

(5) If a student timely files a request for an appeal, a presiding officer will be appointed and will consider any materials reviewed by the presiding officer at the initial hearing along with any materials submitted by the student with the appeal. Within twenty calendar days of the receipt of the appeal, the presiding officer or designee will send a final order setting forth the officer's decision and the reasons for such decision. This order will be the university's final decision. The order should communicate that judicial review of the university's decision may be available under chapter 34.05 RCW.

**WSR 21-21-031**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed October 11, 2021, 2:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-157.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program? and 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?

Hearing Location(s): On November 23, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually.

Date of Intended Adoption: Not earlier than November 24, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., November 23, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov), by 5:00 p.m., November 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments clarify that persons eligible for services through the developmental disabilities administration (for a medical condition expected to last 12 months or more or result in death) are eligible for ABD. Amendments also clarify that good cause reasons for not participating in medical treatment for one's disabling condition(s) include, but are not limited to, reasons outlined in WAC 388-449-0200.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.035, 74.09.530, 74.62.030, 41.05.021.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sanela Maksic, P.O. Box 45470, Olympia, WA 98504, 425-272-3880.

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 rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health

services 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 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

October 11, 2021  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-031, filed 1/12/15, effective 2/12/15)

**WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?**

(1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than twelve months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to ~~((alcohol or drug abuse or addiction))~~ a substance use disorder.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for services through the developmental disabilities administration (DDA) for a medical condition that is expected to last twelve months or more or result in death;

(e) You are eligible for long-term care services from the aging and long-term support administration for a medical condition that is expected to last twelve months or more or result in death; or

~~((e))~~ (f) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1

considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by ~~((alcohol or drug addiction))~~ a substance use disorder and do not meet the other disability criteria in subsection (2)(a) through (d) above, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of ~~((alcoholism or drug addiction))~~ a substance use disorder.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last twelve months unless:

- (a) You file a timely appeal with SSA;
  - (b) SSA decides you have good cause for a late appeal;
- or
- (c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?** (1) You may receive ABD benefits while you are waiting to receive supplemental security income (SSI) benefits only when you:

(a) Have filed your SSI application with the Social Security Administration (SSA), follow through with SSA directions and requirements to process your application including keeping all interview and consultative examination appointments, and do not withdraw your application;

(b) Agree to assign the initial or reinstated SSI payment to us provided under WAC 388-449-0210;

(c) Are otherwise eligible according to WAC 388-400-0060; and

(d) Meet disability criteria listed in WAC 388-449-0001.

(2) To demonstrate your impairments are disabling despite medical treatment, you must participate in medical treatment for the impairments that keep you from working,

unless you ~~((meet one of))~~ have a good cause. Good cause includes, but is not limited to, the following ~~((good cause))~~ reasons:

(a) The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk;

(b) Treatment is not available because you can't obtain it without cost to you;

(c) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits; or

(d) You practice an organized religion that prohibits the treatment.

(3) If you refuse or fail to participate in medical treatment without good cause, your benefits ~~((will))~~ may end and you will remain ineligible until you reapply and provide proof you are pursuing treatment as recommended.

**WSR 21-21-041**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed October 13, 2021, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-117.

Title of Rule and Other Identifying Information: New WAC 314-55-560 Evaluation of additives, solvents, ingredients, or compounds used in the production of marijuana products. The Washington state liquor and cannabis board (WSLCB) proposes a new rule section that would allow WSLCB to evaluate additives, solvents, ingredients, or compounds used in the production and processing of marijuana products other than delta-9 tetrahydrocannabinol (THC), as well as CBD, hemp, or both converted to delta-8 THC, delta-9 THC, or any other marijuana compound that is not currently identified or defined in RCW, WAC, or both, to determine whether such substances pose a risk to public health or youth access.

Hearing Location(s): On December 8, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the WebEx application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit [https://lcb.wa.gov/boardmeetings/board\\_meetings](https://lcb.wa.gov/boardmeetings/board_meetings).

Date of Intended Adoption: Not earlier than December 22, 2021.

Submit Written Comments to: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue S.E., Olympia, WA 98504, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), by December 8, 2021.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Anita.Bingham@lcb.wa.gov, by December 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 69.50.326 (1)(m) provides, among other things, that the board may adopt rules prohibiting the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products. Proposed new rule section WAC 314-55-560 establishes a procedure for the board to prohibit the use of any type of additive, solvent, ingredient, or compound used in the production and processing of marijuana products, and defines these terms in a way that will assist the board in determining whether an additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

Reasons Supporting Proposal: In mid-2020, WSLCB became aware of products entering the regulated market with labeling noting the presence of cannabinoids other than THC. In early 2021, the agency also became aware of the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, and other marijuana compounds not currently identified or defined in RCW, WAC, or both. These products include, but are not limited to marijuana infused edibles and marijuana concentrates. WSLCB also became aware of products with labeling noting the presence of THC compounds other than delta-9 THC in markets it does not regulate.

Currently, the only products that may be produced, processed, and sold in the I-502 system are products defined as "marijuana" in statute. RCW 69.50.101(y) defines "marijuana" as all parts of the plant cannabis with a THC concentration greater than 0.3 percent. RCW 69.50.101(uu) provides that "THC concentration" means percent of delta-9 THC content of any part of the plant cannabis. The production and processing of marijuana products may involve the use of potentially harmful additives, solvents, ingredients or compounds. For example, the chemicals used to create the concentration of delta-8 THC claimed in the current market place may be harmful, and may pose a risk to public health and safety. The proposed rules provide a framework for the board to evaluate whether additives, solvents, ingredients, or compounds used in the production of marijuana products pose or may pose, a risk to public health or youth access.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.342 (1)(m).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1664; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1753; and Enforcement: Chandra Brady, Director of Education and

Enforcement, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1726.

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. A cost-benefit analysis was not required under RCW 34.05.325 because the subject of proposed rule making does not qualify as significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

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.

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. Agencies are required under chapter 19.85 RCW to consider costs imposed on businesses and costs associated with proposed rule compliance. Agencies are not required under chapter 19.85 RCW to consider indirect costs unassociated with compliance. Fines, penalties, or defense costs associated with enforcement actions for failure to comply with proposed rules are considered to be indirect costs that are not associated with compliance. Here, the agency considered potential administrative costs that a licensee may incur if an additive, solvent, ingredient, or compound used in the production and processing of marijuana products is determined to pose a risk to public health or youth access, and the board prohibits its presence in the I-502 market.

WSLCB applied the North American Industry Classification System (NAICS) codes 111419 for marijuana grown under cover, 111998 for marijuana grown in an open field, and 424590 for marijuana processors. The industry descriptions for each of these codes is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

WSLCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects four hours of administrative time at \$50 per hour, for a total of \$200. The agency assumes this activity would include activities such as completing and submitting forms to LCB, and telephone calls.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1%Pay, 0.3%Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
111419	\$200.00	Marijuana Producers	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from USBLS	\$2,324.68 2018 Dataset pulled from DOR
111998	\$200.00	Marijuana Producers	All Other Miscellaneous Crop Farming	\$9,125.03	\$9,125.03 2018 Dataset pulled from USBLS	\$2,834.77 2018 Dataset pulled from DOR
424590	\$200.00	Marijuana Processors	Marijuana Merchant Wholesalers	\$6,733.79	\$3,864.24 2018 Dataset pulled from USBLS	\$6,733.79 2018 Dataset pulled from DOR

These calculations indicate that estimated administrative costs do not exceed minor cost thresholds, and will not impose more-than-minor costs on those who must comply with the rules.

October 13, 2021  
David Postman  
Board Chair

#### NEW SECTION

**WAC 314-55-560 Evaluation of additives, solvents, ingredients or compounds used in the production of marijuana products.** (1) **Purpose and scope.** The purpose of this section is to establish a procedure for the board to evaluate additives, solvents, ingredients or compounds used in the production of marijuana products, as those products are defined in chapter 69.50 RCW.

(2) **Definitions.** For purposes of this chapter, the following definitions apply unless the context clearly states otherwise:

(a) "Additive" means any substance the use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any marijuana product;

(b) "Compound" means a chemical substance composed from more than one separate chemical element;

(c) "Ingredient" means something that enters into a mixture or is a component part of any combination or mixture;

(d) "Nonmarijuana additive" means a substance or a group of substances that are derived from a source other than marijuana.

(i) "Nonmarijuana additive" includes, but is not limited to, purified compounds, essential oils, oleoresins, essences, or extractives, protein hydrolysates, distillates, or isolates;

(ii) "Nonmarijuana additive" does not include plant material that is in the whole, broken, or ground form.

(e) "Solvent" means a substance capable of being used in dissolving a solute with the exception of water.

(3) **Procedure.**

(a) The board may prohibit the use of any additive, solvent, ingredient or compound in the production of marijuana products that may pose a risk to public health or youth access including, but not limited to:

(i) Verifiable case report data;

(ii) Other local, state and federal agency findings, reports, etc.;

(iii) A product or substance that is the subject of a recall under WAC 314-55-225;

(iv) Any other information sourced and confirmed from reliable entities.

(b) The board may prohibit the use of a product or substance by adoption of emergency or permanent rules. The board will provide notices of rule making consistent with the requirements of chapter 34.05 RCW.

(c) The board will maintain a list of prohibited substances prohibited by emergency or permanent rules on its website.

(d) The list of prohibited substances will be reviewed on at least an annual basis.

(e) Prohibited substances may be removed from the list of prohibited substances if the board determines, after a review consistent with (a)(i) through (iv) of this subsection, that it no longer poses a risk to public health or youth access.

**WSR 21-21-045**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
(Division of Child Support)  
[Filed October 14, 2021, 7:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-049.

Title of Rule and Other Identifying Information: WAC 388-14A-4900 Insurers must report claim information to the division of child support and withhold payments if directed.

Implements RCW 26.23.037 and SHB 1416, chapter 168, Laws of 2021, which establishes these reporting requirements. This law takes effect January 1, 2022.

Hearing Location(s): On November 23, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually.

Katherine I. Vasquez  
Rules Coordinator

Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than November 24, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 23, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m., November 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature enacted SHB 1416, chapter 168, Laws of 2021, during the 2021 legislative session. This new law, codified as RCW 26.23.037, directs insurers to report claims in advance of payment to division of child support (DCS). DCS will then use this information to determine whether unpaid child support exists, and if so, send notice to the insurer directing them to remit payment to DCS so that funds can be applied to the unpaid child support.

Reasons Supporting Proposal: This rule making is required to implement SHB 1416, chapter 168, Laws of 2021. It will ensure insurers have sufficient notice of the process and requirements to fully comply with the legal reporting and claims remitting requirements.

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

Statute Being Implemented: RCW 26.23.037 Insurer information exchange—Child support debt—Reporting requirements. (Effective January 1, 2022.)

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brady Horenstein, DCS Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5291.

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. 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.

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), 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.

October 14, 2021

## NEW SECTION

### **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. 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 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) Determine that the claimant is entitled to payment of the insurance claim proceeds; and

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

(a) The claimant's full name;

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

(c) The insurer's name;

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

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

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

(g) The adjustor's name;

(h) The adjustor's telephone number;

(i) The adjustor's email address; and

(j) The insurer's fax number for receiving lien notices.

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

(5) The division of child support will give any lien, claim, or demand for reasonable claim-related attorneys' fees, property damage, and medical costs priority over any with-

holding of payment. These costs must be final costs after all reductions have been pursued with interested parties.

**WSR 21-21-053**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 15, 2021, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-124.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-310-0800 WorkFirst—Support services, and 388-310-1800 WorkFirst—Post employment services.

Hearing Location(s): On November 23, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the impacts of the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than November 24, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., November 23, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email [tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov), by 5:00 p.m., November 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments expand access to support services for WorkFirst participants by allowing more supports for participation activities, increasing the annual support services limit to \$5000 per person per program year, and providing certain post-temporary assistance for needy families (TANF) transportation related supports for up to three months after exiting TANF.

Reasons Supporting Proposal: Amendments allow further accessibility to support services and provide additional support to mitigate potential cliff effects when someone is leaving TANF due to employment.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennie Fitzpatrick, P.O. Box 45470, Olympia, WA 98504, 360-688-6275.

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. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services 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 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii).

October 14, 2021  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-18-024, filed 8/25/15, effective 9/25/15)

**WAC 388-310-0800 WorkFirst—Support services.**

**(1) Who can get support services?**

People who can get support services include:

(a) WorkFirst participants who receive a TANF cash grant;

(b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);

(c) TANF/SFA applicants as needed to meet the WorkFirst orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);

(d) Unmarried or pregnant minors who are income eligible to receive TANF and are:

(i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or

(ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement and/or meeting the school requirements.

(e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

(f) Former WorkFirst participants who are working at least 15 hours per week or more, for up to three months after leaving TANF if they need employment-related transportation support services to meet a temporary need or emergency.

**(2) Why do I receive support services?**

Although not an entitlement, you may receive support services for the following reasons:

(a) To help you participate in work and WorkFirst activities that lead to independence.

(b) To help you to participate in job search, accept a job, keep working, advance in your job, and/or increase your wages.

(c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter ((470-290)) 110-15 WAC describes the rules for this child care assistance program.)

**(3) What type of support services may I receive and what limits apply?**

There is a limit of ~~((three))~~ five thousand dollars per person per program year (July 1st to June 30th) for WorkFirst support services you may receive. ~~((Some types of support services have dollar limit restrictions.))~~

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the restrictions that apply.

Definitions:

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.
- Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.
- Some support services are available if you need them for other required activities in your IRP.

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Reasonable accommodation for employment		x		
Clothing/uniforms		x		
Diapers		x	<u>x</u>	<u>x</u>
Haircut		x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene		x	<u>x</u>	<u>x</u>
Professional, trade, association, union and bonds		x		<u>x</u>
Relocation related to employment <u>or safety</u> (can include rent, housing, and deposits)		x	<u>x</u>	
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment		x	<u>x</u>	<u>x</u>
Car repair needed to restore car to operable condition		x	x	<u>x</u>
License/fees		x	x	<u>x</u>
Mileage reimbursement	Same rate as established by OFM for state employees	x	x	<u>x</u>
Transportation allotment, <u>including fuel support</u>		x	x	x
Counseling		x	x	x
Educational expenses		x	<u>x</u>	x
Medical exams (not covered by medicaid)		x	x	x
Public transportation		x	x	x
Testing-diagnostic		x	x	x

**(4) What are the other requirements to receive support services?**

Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:

- (a) It is within available funds; and
- (b) It does not assist, promote, or deter religious activity; and
- (c) There is no other way to meet the cost.

**(5) What happens to my support services if I do not participate as required?**

The department will give you ten days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

AMENDATORY SECTION (Amending WSR 20-22-020, filed 10/23/20, effective 11/23/20)

**WAC 388-310-1800 WorkFirst—Post employment services. (1) What is the purpose of post employment services?**

Post employment services help TANF or SFA parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

**(2) How do I obtain post employment services?**

You may obtain post employment services by:

- (a) Asking for a referral from the local community service office;
- (b) Contacting community or technical colleges; or
- (c) Contacting the employment security department.

**(3) Who provides post employment services and what kind of services do they provide?**

(a) The employment security department may help you increase your wages, increase your job skills or find a better job by providing you with:

- (i) Employment and career counseling;
- (ii) Labor market information;
- (iii) Job leads for a better job (sometimes called job development);
- (iv) On the job training;
- (v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and
- (vi) Help with finding a new job after job loss (sometimes called reemployment).

(b) Any Washington state technical and community college may approve a skill-training program for you that will help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

- (i) High school/GED;
- (ii) Vocational education training;
- (iii) Job skills training;
- (iv) Adult basic education;
- (v) English as a second language training; or
- (vi) Preemployment training.

**(4) What other services are available while you receive post employment services?**

While you receive post employment services, you may qualify for:

- (a) Working connections childcare, if you meet the criteria for this program under chapter 110-15 WAC.
- (b) Other support services, such as help in paying for transportation or work expenses if you meet the criteria for this program (WAC 388-310-0800).
- (c) Other types of assistance for low-income families such as basic food (~~stamps~~) or help with getting child support that is due to you and your children.

**(5) Who is eligible for post employment services?**

(a) If you are a current TANF or SFA recipient, you may qualify for post employment services if you are working ((twenty) 20) hours or more a week, unless you are in sanction status.

(b) If you are a former TANF or SFA recipient, unless you are in sanction status, you may qualify for post-TANF employment transportation support services for up to three months after exiting TANF or SFA, if you are working 15 hours or more per week.

**(6) What if I lose my job while I am receiving post employment services?**

If you now receive TANF or SFA, help is available to you so that you may find another job and continue in your approved post employment services.

(a) The employment security department will provide you with reemployment services.

(b) At the same time, your case manager may approve support services and childcare for you.

**WSR 21-21-055****PROPOSED RULES****HORSE RACING COMMISSION**

[Filed October 15, 2021, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-120.

Title of Rule and Other Identifying Information: WAC 260-49-070 Distribution of source market fees.

Hearing Location(s): On November 23, 2021, at 9:30 a.m., via Zoom teleconference. Link will be available at [www.whrc.wa.gov](http://www.whrc.wa.gov) prior to hearing.

Date of Intended Adoption: January 1, 2022.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email [doug.moore@whrc.state.wa.us](mailto:doug.moore@whrc.state.wa.us), fax 360-549-6461 [360-459-6461], by November 1, 2021.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email [melanie.bowdish@whrc.state.wa.us](mailto:melanie.bowdish@whrc.state.wa.us), by November 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the percentage of distribution of the source market fees to offset additional pari-mutuel tax increase.

Reasons Supporting Proposal: Continuing current distributions create a negative financial impact on stakeholders created by reducing purses and operating capital for the racing association.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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 impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

October 15, 2021  
Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 20-19-062, filed 9/11/20, effective 10/12/20)

**WAC 260-49-070 Distribution of source market fee.**

(1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee

area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) ~~((Ninety))~~ One hundred percent of the total source market fee directly to the class 1 racing association ~~((and the remaining ten percent directly to the commission))~~.

(b) The class 1 racing association shall submit monthly ~~((two and one half))~~ eight percent of the total source market fee to the commission of which two and one-half percent to be deposited into the Washington bred owners' bonus fund and five and one-half percent to be deposited into the commission's operating account.

(c) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

(d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

### WSR 21-21-056

#### PROPOSED RULES

#### PUBLIC DISCLOSURE COMMISSION

[Filed October 15, 2021, 10:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-063.

Title of Rule and Other Identifying Information: Amending the rules regarding the inspection of commercial advertisers' records for political advertising or electioneering communications, including advertising on digital media.

Hearing Location(s): On December 2, 2021, at 9:30 a.m., at 711 Capitol Way South, Suite 206, Olympia, WA 98504. Due to COVID-19 protocol the hearing will [be] conducted remotely and streamed live at <https://www.youtube.com/user/WASTPDC/live>. To provide public comment via conference line during this time please call 1-360-522-2372.

Date of Intended Adoption: December 2, 2021.

Submit Written Comments to: Sean Flynn, P.O. Box 40908, email [pd@pdc.wa.gov](mailto:pd@pdc.wa.gov).

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, email [pd@pdc.wa.gov](mailto:pd@pdc.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal addresses how commercial advertisers respond to requests for records of the political advertising and electioneering communication it provides, the format for making such information available, and the content that must be disclosed.

Reasons Supporting Proposal: The proposal addresses the application of the commercial advertiser rules in recognition of the evolving digital media market and the increased use of digital media by political campaigns.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.345.

Statute Being Implemented: RCW 42.17A.110 and 42.17A.345.

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

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sean Flynn, 711 Capitol Way South, Suite 206, Olympia, WA, 360-753-1111; Enforcement: Kim Bradford, 711 Capitol Way South, Suite 206, Olympia, WA, 360-753-1111.

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 public disclosure commission is not required to prepare a cost-benefit analysis under RCW 34.05.328 (5)(b).

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.

October 14, 2021

Sean Flynn

General Counsel

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

**WAC 390-18-050 Commercial advertisers—Public inspection of records.** (1) "Commercial advertiser" as that term is used in the act and these rules ~~((means any person, as defined in the act, including individuals and entities, that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public whether through brochures, fliers, newspapers, magazines, television, radio, billboard, direct mail advertising, printing, paid internet or digital communications, or any other means of mass communications used for the purpose of appealing, directly or indirectly for votes or for financial or other support in any election campaign))~~ is defined under RCW 42.17A.005.

(2) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if ~~((it has))~~ the services have been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the ((advertising or communications to the original purchaser)) services must maintain the information as required in this section. In order to ensure that such commercial advertiser directly makes its books of account available for public inspection, when selling digital media services to be hosted on another platform or other media, the advertiser must

include a separate text box or link that automatically appears with the advertisement or communication in a manner that is compatible with the device and technology used to display the advertising, and that reasonably directs the reader to at least one method under subsection (4) of this section for making the required information available. Such methods may include, but are not limited to, an address or location for receiving in-person inquiries, a link to a portal for processing requests, or a link to a website where the required information is maintained.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, ~~((as defined in RCW 42.17A.005;))~~ must maintain current books of account and related materials as required by this section. Information contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

(a) In person during normal business hours; or

(b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request, but no later than two business days; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary website; or

(B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

~~((4) Information regarding political advertising or electioneering communications must be made available within twenty-four hours of the time when the advertisement or communication initially has been publicly distributed or broadcast, and within twenty-four hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.))~~

(5) A commercial advertiser may have, to the extent necessary, up to an additional three business days to update its books of account or respond to a request to inspect its records, regarding any particular political advertising or electioneering communication, or to provide the required identifying link or attachment for digital media as required under subsection (2) of this section, if:

(a) At the time the order was placed, the commercial advertiser had asked the purchaser in writing whether the order included any political advertising or electioneering communication; and

(b) The purchaser did not provide such information.

(6) The information and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345 are:

(a) ~~((The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified, and whether the advertising or communication supports or opposes the candidate or ballot measure;))~~ A copy of the advertisement or communication in a print or digital graphic record for any media with a visual component, or in an audio or transcribed record for any radio or other media that does not include a visual component;

(b) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employee identification number, or other verifiable identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;

(c) The total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

~~((6))~~ (7) In addition to subsection ~~((5))~~ (6) of this section and pursuant to RCW 42.17A.345, the materials and books of account open for public inspection must include the political advertisement or electioneering communication itself, and a description of the major work components or tasks, as specified in (a) through (g) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Air time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

(g) For digital communication platforms: A description of the demographic information, the statistical characteristics of a population (e.g., age, gender, race, ethnicity, religion, language, location, marital status, education, occupation,

income, etc.), of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business, and the total number of impressions generated by the advertisement ((~~or~~)) or communication.

((~~7~~)) (8) At the request of the PDC, each commercial advertiser required to comply with this section must provide to the PDC copies of the information described above.

**WSR 21-21-057**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**

[Filed October 15, 2021, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-034.

Title of Rule and Other Identifying Information: WAC 332-30-166 Open water disposal sites. Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. Disposal fees will be charged at rates sufficient to cover all departmental costs associated with management of the sites including science, monitoring, and program compliance costs. Fees will be reviewed and adjusted annually or more often as needed.

Hearing Location(s): On December 1, 2021, at 6:00-7:30 p.m., virtual, +1 564-999-2000, Phone Conference ID 256 011 374#.

Date of Intended Adoption: February 7, 2022.

Submit Written Comments to: Abby Barnes, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA 98501, email dmmp@dnr.wa.gov, fax 360-902-1786, by December 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Disposal fees will be adjusted to ensure adequate funds for management, science and monitoring of disposal sites.

Reasons Supporting Proposal: The fee amounts in the existing rule are insufficient to cover departmental costs associated with management and monitoring of disposal sites. After review of the current fund balance, projected revenue, and expected expenditures, a deficit has been identified. To remain in compliance with WAC 332-30-166(9) fees will need to be adjusted to meet costs associated with management and monitoring of the disposal sites.

Statutory Authority for Adoption: RCW 43.30.150, 79.90.550, 79.90.555, and 79.90.560.

Statute Being Implemented: RCW 43.30.150, 79.90.550, 79.90.555, and 79.90.560.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Department of natural resources (DNR) is initiating the process of rule making to develop a new fee structure that will address the funding shortfall and keep disposal sites open.

Name of Proponent: Washington DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Abby Barnes, Olympia, Washington, 360-995-2419; Implementation and Enforcement: Shannon Soto, Olympia, Washington, 360-999-8094.

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. A cost-benefit analysis is not needed for this rule change. A small business economic impact statement was developed.

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. DNR believes that the increase in fees would represent a minimal financial impact compared to the overall costs of dredging and disposal for businesses. The impact would vary depending on the business, but in the hypothetical scenarios described in the small business economic impact statement, fee increase would result in an additional \$0.15 - \$0.69 of costs per \$100 in sales for small businesses.

A copy of the detailed cost calculations may be obtained by contacting Abby Barnes, 1111 Washington Street S.E., Olympia, WA 98501, phone 360-995-2419, fax 360-902-1786, email dmmp@dnr.wa.gov.

October 14, 2021

Katrina Lassiter  
Interim Deputy Supervisor  
for Aquatic Resources

AMENDATORY SECTION (Amending WSR 94-23-006, filed 11/3/94, effective 12/4/94)

**WAC 332-30-166 Open water disposal sites.** (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Material may be disposed of on state-owned aquatic land only at approved open water disposal sites and only after ~~((authorization has been obtained))~~ authorized in writing from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the ~~((interagency open water disposal site evaluation committee))~~ Dredged Material Management Program (DMMP) for establishment of a new site. DMMP consists of the following agencies: The Washington state department of natural resources; the Washington state department of ecology; the U.S. Environmental Protection Agency Region 10; and U.S. Seattle District Army Corps of Engineers.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.

(4) The department will only ~~((issue authorization for use of))~~ authorize the site for disposal after:

(a) The U.S. Environmental Protection Agency and Washington department of ecology notify the department

that, in accordance with Sections 404 and 401, respectively, of the Federal Clean Water Act, the dredged materials are suitable for in-water disposal and do not appear to create a threat to human health, welfare, or the environment; and

(b) All necessary federal, state, and local permits are acquired.

(5) Any use authorization granted by the department shall be subject to the terms and conditions of any required federal, state, or local permits.

(6) The department shall suspend or terminate any authorization to use a site upon the expiration of any required permit.

(7) All ~~((leases))~~ authorizations for use of a designated site must require notification to DNR in Olympia ~~((twenty-four))~~ 24 hours prior to each use. ~~((DNR-Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.))~~

(8) Pipeline disposal of material to an established disposal site will require special consideration.

(9) ~~The department will charge fees ((will be charged))~~ at rates sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A ~~((penalty))~~ damage fee may be charged for unauthorized ~~((dumping))~~ disposal or ~~((dumping))~~ disposal beyond the ~~((lease))~~ authorized site. Army Corps of Engineers navigation channel maintenance projects where there is no local sponsor are exempt from this fee schedule.

#### FEES

(a) Puget Sound and Strait of Juan De Fuca: The cost of disposal at all disposal sites in the Puget Sound and Strait of Juan De Fuca is \$0.45 per cubic yard (c.y.) until and including June 30, 2022. On July 1, 2022, the cost for disposal is \$0.75 (c.y.) until and including June 30, 2025. Beginning on July 1, 2025, the cost of disposal shall be \$0.95 (c.y.) and thereafter. All disposal site users shall pay a minimum fee of \$2,000 ((minimum)).

(b) Grays Harbor/Willapa Bay: The cost of disposal at all disposal sites in Grays Harbor/Willapa Bay is \$0.10 per cubic yard (c.y.) ((- minimum fee)) until and including June 30, 2022. On July 1, 2022, the cost for disposal is \$0.15 (c.y.) until and including June 30, 2025. Beginning July 1, 2025, the cost of disposal shall be \$0.20 (c.y.) and thereafter. All disposal site users shall pay a minimum fee of \$300.00.

(c) Damage fee - \$5.00/cubic yard.

(10) Open water disposal site selection. Sites are selected and managed by the department with the advice of the ~~((inter-agency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee))~~ DMMP. The DMMP has developed a series of guidelines ~~((to be used))~~ for use in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the area, and to minimize

the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being ~~((dumped))~~ disposed of.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems ~~((which))~~ that exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(j) Placement of temporary site marking buoys may be required.

(k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.

(l) Special consideration should be given to placing material at a site where ~~((#))~~ disposal will enhance the habitat for living resources.

(m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(11) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.

#### WSR 21-21-073

#### PROPOSED RULES

#### WASHINGTON STATE PATROL

[Filed October 18, 2021, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-111.

Title of Rule and Other Identifying Information: Ignition interlock device regulations: WAC 204-50-030 Definitions, 204-50-070 Variable calibration of an ignition interlock device, and 204-50-110 Mandatory requirements for an ignition interlock device.

Hearing Location(s): On November 30, 2021, at 10:00 - 11:00 a.m. Call-in 1-253-215-8782, Meeting ID 914 8213 3323, Passcode 373864. Hearing to be held via Zoom.

Date of Intended Adoption: November 30, 2021.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by November 26, 2021.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, phone 360-596-4017, by November 26, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 204-50-030, 204-50-070, and 204-50-110 are needed to coincide with legislative changes to the alcohol set point in RCW 46.20.720, which will become effective January 1, 2022. Additionally, there is a need to clean up, update and move some of the definitions in WAC 204-50-030 to conform to language in other rules. Finally, updates to WAC 204-50-070 are needed to clean up existing language to provide clarity and consistency in terms to ensure the rule references and complies with current laws in the state of Washington.

Reasons Supporting Proposal: Updates are to ensure consistency with statutory changes, provide clarity, and clean up existing language.

Statutory Authority for Adoption: RCW 43.43.395, 46.37.005, 46.04.215.

Statute Being Implemented: RCW 46.20.720.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sergeant Brandon Villanti, Seattle, Washington, 206-720-3018; Enforcement: Washington State Patrol, Olympia, Washington, 206-720-3018.

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. A cost-benefit analysis is not required per RCW 34.05.328 (5)(a)(i) - (ii) and 34.05.328 (5)(b)(iii) - (v).

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 are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.020 (3) and (4).

Explanation of exemptions: The revision of the set point required by statute will necessitate a software or firmware update in all ignition interlock devices in Washington. These changes will be implemented at the manufacturer level. None of the five manufacturers with devices certified in Washington meet the definition of small business, so these changes will not impact small business.

October 18, 2021

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

**WAC 204-50-030 Definitions.** The ~~((following definitions will))~~ definitions in this section apply throughout this chapter:

(1) "Alcohol" ~~((-))~~ means the unique chemical compound ethyl alcohol or ethanol. ~~((For the purpose of ignition interlock devices, all devices will be specific for ethyl alcohol.~~

~~(2) Bogus sample — Any air sample that is altered, diluted, contaminated, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with an ignition interlock device.~~

~~(3))~~ (2) "Breath alcohol concentration" or "BrAC" ~~((Is the amount of alcohol in a person's breath determined by chemical analysis, which shall be measured by grams of alcohol per 210 liters of breath))~~ has the same meaning as in RCW 46.04.015(1).

~~((4))~~ (3) "Certification" ~~((-))~~ means the testing and approval process required by RCW ~~((46.04.215,))~~ 43.43.395 and chapter 204-50 WAC.

~~((5))~~ (4) "Chief" ~~((-))~~ means the chief of the Washington state patrol ~~((or his or her designee)).~~

~~((6))~~ (5) "Circumvent" or "circumvention" ~~((-))~~ means the attempted or successful bypass of the proper functioning of an ignition interlock device by any means including, but not limited to:

(a) The operation of a vehicle without a properly functioning ignition interlock device;

(b) The push start of a vehicle with ~~((the))~~ an ignition interlock device;

(c) The alteration or disconnection of any part of the ignition interlock device including the control head while the vehicle is in operation ~~((or alteration of the ignition interlock device));~~

(d) The intentional introduction of ~~((a bogus))~~ an air sample ~~((other than a deep lung sample from the driver of the vehicle))~~ that is altered, diluted, contaminated, stored, or filtered, or that is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanic device, to start or continue to operate a vehicle;

(e) The ~~((introduction of an intentionally contaminated or altered breath sample))~~ intentional introduction of an air sample from an individual who is not the driver of the vehicle to start or continue to operate the vehicle;

(f) The intentional disruption or blocking of a digital image identification device or global positioning system;

(g) The continued operation of the interlock equipped vehicle after the ignition interlock device detects excess breath alcohol.

~~((7))~~ (6) "Court" ~~(((-))~~ or "originating court~~((-))~~" means the particular ~~((Washington state))~~ court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the ~~((preconviction))~~ pretrial or postconviction supervision of an individual required to use or using the ignition interlock device.

(7) "Designee" means a person designated by the chief of the Washington state patrol.

(8) "DOL" ((-)) means the Washington state department of licensing (of the state of Washington).

(9) ~~((Fail level — The BrAC of .025 g/210L or a level set by the originating court, if lower, at which the ignition interlock device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below.~~

(10) "Fee" ((-)) means a nonrefundable administrative fee set by schedule and paid to the patrol by the manufacturer through electronic funds transfer.

~~((11)) (10) "Ignition interlock device" ((—An electronic device that is installed in a vehicle which requires submitting to a BrAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the ignition interlock device detects a BrAC test result below the alcohol setpoint, the ignition interlock device will allow the vehicle's ignition switch to start the engine. If the ignition interlock device detects a BrAC test result above the alcohol setpoint, the vehicle will be prohibited from starting)) means the same as that term is defined in RCW 46.04.215.~~

~~((12)) (11) "Ignition interlock technician" ((-)) or "technician" means a person employed by the ignition interlock device manufacturer ((or)), vendor or service center and certified by the impaired driving section to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state.~~

~~((13)) (12) "Impaired driving section" ((-)) means the section of the Washington state patrol that has been designated by the chief ((of the Washington state patrol)) to coordinate and regulate ignition interlock devices, service centers and technicians.~~

~~((14) Initial start failure — A breath sample introduced into an ignition interlock device when a restricted operator is attempting to start a vehicle with a BrAC higher than .025 g/210L or the alcohol concentration as prescribed by the originating court.~~

(15) (13) "Lessee" ((-)) means a person who has entered into an agreement with a manufacturer, vendor, or service center to lease an ignition interlock device.

~~((16)) (14) "Letter of certification" ((-)) or "certificate" means a letter issued by the Washington state patrol that authorizes;~~

~~(a) A manufacturer's ignition interlock device to be installed and used ((as an ignition interlock device under)) in Washington state as provided in this chapter; ((or))~~

~~(b) An ignition interlock technician to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state; or~~

~~(c) A service center ((location)) to service, install, monitor, and calibrate ignition interlock devices currently certified ((for use)) in Washington state.~~

~~((17)) (15) "Lockout" ((-)) means a period of time where the ignition interlock device will not allow a breath sample to be delivered or a vehicle's engine to be started.~~

~~((18)) (16) "Manufacturer" ((—The)) means a person, company, or corporation ((who)) that produces ((the)) an ignition interlock device((, and certifies to the impaired driving section that a service center, vendor, or ignition interlock technician is qualified to service, install, monitor, calibrate,~~

~~remove, instruct, and provide information on the manufacturer's ignition interlock device).~~

~~((19)) (17) "OAC" ((—Office of the administrator)) means the administrative office of the courts.~~

~~((20)) (18) "Patrol" ((-)) means the Washington state patrol as that term is defined in RCW 43.43.010.~~

~~((21)) (19) "Restricted operator" ((-)) means a person whose driving privileges are restricted by court order or the department of licensing to operating only motor vehicles equipped with ((an approved;)) a functioning certified ignition interlock device.~~

~~((22)) (20) "Service center" ((-)) is the same as service provider as referenced in RCW 43.43.395 and means a location certified by the impaired driving section to service, install, monitor, remove and calibrate certified ignition interlock devices in Washington state.~~

~~((23)) (21) "Tamper" or "tampering" ((-)) means any act or attempt to disable or circumvent the legal operation of an ignition interlock device.~~

~~((24)) (22) "Vendor" ((-)) means an impaired driving section approved company, business, or distributor who is contracted by a manufacturer to manage a service center((s and/or technicians)), a technician, or both.~~

~~((25)) (23) "Violation reset" ((—An unscheduled service of the ignition interlock device which includes the following:~~

~~(a) Calibration as outlined in WAC 204-50-080 (3)(a);~~

~~(b) Visual inspection of wiring harness;~~

~~(c) Download of the ignition interlock device's data storage system)) means a feature of the ignition interlock device that activates a service reminder due to a violation.~~

~~((26)) (24) "Wet bath simulator" ((-)) means a device ((which)) that provides a vapor sample of a known alcohol concentration when filled with a certified alcohol and water ((simulator) solution((;)) and maintained at a ((known)) specific temperature((, provides a vapor sample of a known alcohol concentration)).~~

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

**WAC 204-50-070 ((Variable calibration)) Alcohol set point of an ignition interlock device. ((To be certified;)) (1) An ignition interlock device must be capable of being preset((, by only)) by the manufacturer((, at any fail level from .02 through .09 g/210L BrAC (plus or minus .005 g/210L BrAC). The actual setting of each ignition interlock device, unless otherwise mandated by the originating court, must be .025 g/210L BrAC.) to an alcohol set point from .020 to .070 BrAC.**

**(2) The alcohol set point of each ignition interlock device must be set at .020 BrAC, unless otherwise mandated by the originating court.**

**(3) The capability to change ((this setting)) the set point must be made secure((;)) by the manufacturer.**

**(4) The manufacturer must notify the impaired driving section in writing within seven calendar days of installing an ignition interlock device with an alcohol set point other than .020 BrAC.**

(5) As used in this section, "alcohol set point" means the BrAC level at which the ignition interlock device will prevent the operator from starting the vehicle, and once the vehicle is started, the level below which the operator must record a test.

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

**WAC 204-50-110 Mandatory requirements for an ignition interlock device.** (1) Notwithstanding other provisions of this chapter, a certified ignition interlock device must:

(a) Be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off, except a "restart" will not be permitted during a violation reset condition.

(b) Automatically and completely purge residual alcohol before allowing subsequent tests.

(c) Allow a minimum of 1500 ml or 1.5 L of breath for an acceptable breath sample.

(d) Allow a minimum of three minutes and a maximum of six minutes for random breath tests to be initiated prior to an indication of a missed test and a violation reset. The device must be capable of notifying the restricted driver of this time period. Acceptable forms of notification are use of an indicator light, audible tone, voice modulation and/or countdown timer.

(e) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.

(f) Include a supply of two disposable mouth pieces upon installation, designed to minimize the introduction of saliva into an ignition interlock device, and an additional mouth piece with every sixty to sixty-five day calibration period.

(g) Have all primary components as identified by the impaired driving section uniquely serial numbered, which includes, but may not be limited to, the storage device, handset, and camera.

(h) Uniquely identify and record each time the vehicle is attempted to be started and/or started, the results of all tests, retests or failures as being a malfunction of the device or from the operator not meeting the requirements, how long the vehicle was operated, and any indication of bypassing or tampering with the ignition interlock device, or tests.

(i) ~~(On or before June 10, 2015,)~~ Require a restricted operator to wait five minutes before attempting to start the vehicle a second or third time and thirty minutes prior to the fourth or subsequent attempts to initially start the vehicle when the initial start failure occurs.

(j) Require the operator of the vehicle to submit to a random retest within ten minutes of starting the vehicle. A random retest must continue at variable intervals ranging from ten to forty-five minutes after the previous retest for the duration of the travel. If a bypass is recorded at start up, the random breath testing procedure will continue for the duration of travel.

(k) Be equipped with a method of immediately notifying law enforcement officers if a violation reset occurs from a random retest or the result of the retest exceeds the lower of

~~((.025 g/210L))~~ .020 BrAC or the alcohol concentration as prescribed by the originating court or any disconnection of the ignition interlock device control head for longer than one minute after vehicle start up. Acceptable forms of notification are repeated honking of the vehicle's horn or the use of an audible signaling device. Such notification may be disabled only by switching the engine off, or by the achievement of a retest at a level the lower of ~~((.025 g/210L))~~ .020 BrAC or the maximum allowable alcohol concentration as set by the originating court.

(l) Enter into violation reset when the restricted operator has:

(i) Recorded a random test failure;

(ii) Disconnected the control head after start up;

(iii) Failed to submit to a random retest;

(iv) Failed to have the ignition interlock device serviced within the time period described in this chapter.

(m) Enter into a lockout if a violation reset occurs unless the vehicle is serviced at a mobile or fixed site service center by a certified technician where it will be calibrated, downloaded and the wiring harness physically inspected within five days of when the violation reset occurred.

(n) When reasonably available, contain a digital image identification device as prescribed in RCW 43.43.395. The digital image device will not distract or impede the driver in any manner from safe and legal operation of the vehicle and will:

(i) Encode a digital or photographic image of the vehicle driver including the time, date and BrAC level of all breath attempts. All images and data for a sixty-five day use period must be stored in the device's memory to be downloaded and stored by the manufacturer for three years.

(ii) Capture a digital image or photograph of the driver:

(A) Within five seconds after starting the vehicle.

(B) Upon initial notification that a random retest is required.

(C) When a violation reset condition is initiated.

(D) Randomly at the discretion of the manufacturer.

(iii) Produce a digital image, identifiable verification or a photograph of the restricted driver in all lighting conditions; extreme brightness, darkness and low light conditions.

(2) The digital image identification device reference in subsection (1)(n) of this section and RCW 43.43.395 is considered reasonably available in the area of Washington state. The digital image identification device must be incorporated into:

(a) Any new ignition interlock device installation and any user in violation of RCW 46.20.720(4) by January 1, 2013.

(b) Any ignition interlock device issued to a user under a five or ten year restriction by June 10, 2013.

(c) All ignition interlock devices by June 10, 2015.

(3) The manufacturer, vendor, ignition interlock technician or service center shall notify the originating court (if any) of such violation reset conditions within five days of servicing the ignition interlock device in a format acceptable to the originating court. The manufacturer, vendor or service center must provide notification to DOL and impaired driving section in an acceptable electronic format should DOL or

impaired driving section promulgate rules requiring such notification of a violation reset condition.

(4) In addition to any other information required by DOL, the impaired driving section, or by an originating court, all reports to DOL, the impaired driving section or to an originating court concerning a particular ignition interlock device must include:

(a) The full name, address, and driver's license number of the restricted operator, lessee, and registered owner;

(b) The vehicle license registration number of the single vehicle in which the ignition interlock device was installed;

(c) The unique serial number of the ignition interlock device; and

(d) The toll free telephone number, and certification number of the installing service center and ignition interlock technician who installed and prepared the report for the ignition interlock device.

(5) As used this section, "initial start failure" means the failure of the vehicle to start following the introduction of a breath sample into an ignition interlock device when an operator is attempting to start a vehicle with an alcohol concentration equal to or higher than .020 BrAC or a level ordered by the originating court.

**WSR 21-21-078**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed October 18, 2021, 1:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-067.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-424-0001 Citizenship and alien status—Definitions, 388-424-0009 Citizenship and alien status—Social Security number (SSN) requirements, 388-424-0010 Citizenship and alien status—Eligibility for TANF, 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash and PWA programs, 388-424-0030 How does my alien status impact my eligibility for state-funded benefits under the food assistance program?, and 388-400-0010 Who is eligible for state family assistance?

The department also proposes to adopt the following new section to chapter 388-424 WAC, Citizenship/alien status: WAC 388-424-0035 Verifications—Survivors of certain crimes.

Hearing Location(s): On November 23, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504, public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the impacts of the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than November 24, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., November 23, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email [tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov), by 5:00 p.m., November 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments support implementation of 3SSB 5164 (chapter 136, Laws of 2020). Effective February 1, 2022, victims of human trafficking, and other certain crimes, and their qualifying family members are eligible for the food assistance program for legal immigrants and state family assistance.

Reasons Supporting Proposal: See above.

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

Statute Being Implemented: RCW 74.04.005, 74.04.820, 74.08A.120, 74.09.035.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Olga Walker, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4641.

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. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services 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 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed rules do not affect small businesses. They only affect DSHS clients.

October 18, 2021  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-02-028, filed 12/29/15, effective 2/1/16)

**WAC 388-400-0010 Who is eligible for state family assistance?** (1) To be eligible for state family assistance (SFA), (~~aliens~~) applicants must meet Washington state residency requirements as listed in WAC 388-468-0005 and immigrant eligibility requirements as listed in WAC 388-424-0015.

(2) You are eligible for SFA if you are not eligible for temporary assistance for needy families (TANF) for the following reasons:

(a) You are a qualified alien and have been in the United States for less than five years as described in WAC 388-424-0006;

(b) You are a nonqualified alien as defined in WAC 388-424-0001, who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(c) You are a ~~((nineteen))~~ 19 or ~~((twenty-year-old))~~ 20 year old student that meets the education requirements of WAC 388-404-0005;

(d) You are a caretaker relative of a ~~((nineteen))~~ 19 or ~~((twenty-year-old))~~ 20 year old student that meets the education requirements of WAC 388-404-0005; ~~((or))~~

(e) You are a pregnant woman who has been convicted of misrepresenting their residence in order to receive benefits from two or more states at the same time; or

(f) You do not meet citizenship or immigration status requirements in WAC 388-424-0010 and you are a survivor of certain crimes as defined in WAC 388-424-0001(4).

(3) You and the other TANF eligible members of your assistance unit may receive, at the department's discretion, SFA rather than TANF if:

(a) You are otherwise eligible for TANF as a parent; and

(b) Another parent in your assistance unit is eligible for TANF or SFA; and

(c) One of the following conditions exists:

(i) You or the other parent in your assistance unit is pregnant; or

(ii) Your assistance unit includes a child under ~~((twelve))~~ 12 months of age.

(4) If you apply for SFA, have not received SFA within the past ~~((thirty))~~ 30 days, and will be a mandatory WorkFirst participant as described in WAC 388-310-0200 once approved, you must complete a WorkFirst orientation before we approve your application.

AMENDATORY SECTION (Amending WSR 20-09-044, filed 4/8/20, effective 5/9/20)

**WAC 388-424-0001 Citizenship and ~~((alien))~~ immigration status—Definitions.** For the purposes of determining an individual's citizenship and ~~((alien))~~ immigration status for public assistance, the following definitions apply:

(1) **"Lawfully present"** are immigrants or noncitizens who have been inspected and admitted into the United States and have not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and ~~((Immigrant))~~ Immigration Services (CIS) to stay or live in the U.S.

(2) **"Qualified aliens"** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under INA §207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Laotian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or

widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking according to federal law are:

(A) Individuals who have been certified ~~((or approved))~~ as victims of trafficking by the federal U.S. Department of Health and Human Services (HHS), Office ~~((of refugee resettlement))~~ on Trafficking in Person (OTIP), or have been granted a T visa.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or unmarried minor sibling if the victim is under ~~((twenty-one))~~ 21 years old.

(iii) Special immigrants from Iraq and Afghanistan are individuals granted special immigrant status under INA §101 (a)(27).

(c) Individuals who have been granted asylum under INA §208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried child under age ~~((twenty-one))~~ 21 of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the violence against women act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned ~~((twenty-one))~~ 21 years old. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn ~~((twenty-one))~~ 21 years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA §212 (d)(5), including "public interest" parolees.

(g) Individuals granted withholding of deportation or removal under INA §243(h) or §241 (b)(3).

(h) Individuals who were admitted to the U.S. as conditional entrants under INA §203 (a)(7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **"Nonqualified aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (1) of this section. Nonqualified aliens include but are not limited to:

(a) Citizens of Marshall Islands, Micronesia or Palau;

(b) Immigrants paroled into the U.S. for less than one year;

(c) Immigrants granted temporary protected status; or

(d) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also non-qualified. Examples include:

(i) Business visitors;

(ii) Students; and

(iii) Tourists.

(4) "Survivors of certain crimes" are noncitizens, and any of their qualifying family members, as defined in subsection (5) of this section, who have:

(a) Filed or are preparing to file an application for a T visa (trafficking victim);

(b) Filed or are preparing to file an application for a U visa (crime victim); or

(c) Been harmed by one of the specific crimes described below; and

(i) Was granted continued presence by U.S. Homeland Security; or

(ii) Has filed or is preparing to file an application for asylum status.

Specific crimes include:

(A) Those related to human trafficking, kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, and coercion of involuntary servitude under chapter 9A.40 RCW;

(B) Sexual exploitation of children under chapter 9.68A RCW; or

(C) Substantially similar crimes under federal law or the laws of another state.

(5) "Qualifying family members" are the spouse and child(ren) of survivors of certain crimes, and the parents or unmarried minor siblings if the survivor is under 21 years old. Qualifying family members do not include a person charged with or convicted of attempt, conspiracy, solicitation, or commission of a crime, listed under subsection (4)(c) (i-iii) of this section, against the survivor of certain crimes.

((4)) (6) "Undocumented aliens" are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

((5)) (7) "U.S. citizens" are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per title 8, subchapter III, section 1401 of the United States Code.

(e) Individuals who turn ((eighteen)) 18 years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age eighteen per INA 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals, who turned ((eighteen)) 18 before February 27, 2001, would have automatically ((become)) became a citizen if, while ((the individual was)) still under ((eighteen)) 18, ((he or she)) they became a lawful permanent resident and both ((his or her)) of their parents were naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

((6)) (8) "U.S. nationals" are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

**WAC 388-424-0009 Citizenship and ((alien)) immigration status—Social Security number (SSN) requirements.** (1) Any person who has applied for a Social Security number (SSN) as part of their application for benefits cannot have benefits delayed, denied, or terminated pending the issuance of the SSN by the Social Security Administration (SSA).

(2) The following ((immigrants)) benefit applicants are not required to apply for an SSN:

(a) An alien, regardless of their immigration status, who is applying for a program listed in WAC 388-476-0005(6);

(b) A nonqualified alien; ((and))

(c) Members of a household who are not applying for benefits for themselves; and

(d) Individuals who meet the definition of "survivor of certain crimes" as defined in WAC 388-424-0001(4).

(3) "Qualified and nonqualified aliens," as defined in WAC 388-424-0001, who are applying for federal benefits but who are not authorized to work in the U.S., must still apply for a nonwork SSN. The department must assist them in this application without delay.

(4) Any person who is otherwise eligible for benefits may choose not to provide the department with an SSN without jeopardizing the eligibility of others in the household. See WAC 388-450-0140 for how the income of such individuals is treated.

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

**WAC 388-424-0010 Citizenship and ((alien)) immigration status—Eligibility for TANF.** (1) To receive tem-

porary assistance for needy families (TANF), an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien"(~~(§~~
- ~~(e) A victim of trafficking; or~~
- ~~(f) A Hmong or Highland Lao)) as defined in WAC 388-424-0001(2).~~
- (2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF.
- (3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006(4) are met.
- (4) An alien who is ineligible for TANF because of the five-year bar or because of their immigration status may be eligible for:
  - (a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program); or
  - (b) State-funded cash as described in WAC 388-424-0015 (state family assistance (SFA)), and aged, blind, or disabled (ABD) cash.

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

**WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash, and PWA programs.** (1) To receive state family assistance (SFA) benefits, you must be:

- (a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); (~~(¶)~~
- (b) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001; or
- (c) A "survivor of certain crimes" as defined in WAC 388-424-0001(4).

(2) To receive aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be:

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or
- (e) A nonqualified alien described in WAC 388-424-0001 who:
  - (i) Has verified their intent to stay in the United States indefinitely; and
  - (ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.

AMENDATORY SECTION (Amending WSR 20-09-044, filed 4/8/20, effective 5/9/20)

**WAC 388-424-0030 How does my (~~(alien)~~) immigration status impact my eligibility for state-funded benefits under the food assistance program?** (1) If you are not a U.S. citizen and are not eligible for federally funded basic food benefits, you may be eligible for state-funded benefits under the food assistance program (FAP) if you are (~~(a legal immigrant. This means you must be one of the following)~~):

- (a) A "qualified alien" as defined in WAC 388-424-0001, who does not meet the eligibility requirements under WAC 388-424-0020 to receive federally funded basic food benefits; (~~(¶)~~
- (b) A "nonqualified alien" as described in WAC 388-424-0001 who:
  - (i) Is not a nonimmigrant as described in WAC 388-424-0001 (3)(d);
  - (ii) Intends to stay in the United States indefinitely; and
  - (iii) The United States Immigration and Customs Enforcement is not taking steps to enforce your departure; or
  - (c) A "survivor of certain crimes" as defined in WAC 388-424-0001(4).
- (2) If you are eligible for state-funded FAP, we calculate your benefits as described under WAC 388-400-0050.

NEW SECTION

**WAC 388-424-0035 Verifications—Survivors of certain crimes.** (1) Applicants may provide a signed self-attestation to verify that they meet the requirements of WAC 388-424-0001(4). Alternative proof, such as supporting documents, may also be provided.

(2) Absence of the following documents shall not affect eligibility for benefits for applicants defined under WAC 388-424-0001(4):

- (a) Passport;
- (b) Valid regular or nonwork SSN;
- (c) Alien Registration number; or
- (d) Documentation from a federal agency used to verify immigration status.

## WSR 21-21-080

### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Order 19-05—Filed October 18, 2021, 2:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-073.

Title of Rule and Other Identifying Information: The Washington state department of ecology (ecology) is considering revising chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. We are considering the following revisions in this rule making:

- Adding definitions to WAC 173-201A-020 Definitions.
- Amending WAC 173-201A-200 (1)(d) aquatic life dissolved oxygen criteria for fresh water.

- Adding a subsection WAC 173-201A-200 (1)(h) aquatic life fine sediment narrative criterion.

For more information on this rule making visit <https://ecology.wa.gov/SalmonHabitatRule>.

Hearing Location(s): On December 8, 2021, at 5:30 p.m., webinar <https://watech.webex.com/watech/onstage/g.php?MTID=e724a8c0cb8cda600a60000e8a85c60d1>. Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=e724a8c0cb8cda600a60000e8a85c60d1>. For audio call US Toll number 1-415-655-0001 and enter access code 2462 183 2124; and on December 9, 2021, at 1:30 p.m., webinar <https://watech.webex.com/watech/onstage/g.php?MTID=e9677d0a2b2fff7eb1bc1ee483394a933>. Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=e9677d0a2b2fff7eb1bc1ee483394a933>. For audio call US Toll number 1-415-655-0001 and enter access code 2460 493 9912.

Date of Intended Adoption: March 9, 2022.

Submit Written Comments to: Susan Braley, send via U.S. mail at Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600 (U.S. mail); or send parcel delivery services to Ecology, Water Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503. Submit comments by mail, online, or at the hearing(s). Online <https://wq.ecology.commentinput.com/?id=RFGDN>, by December 16, 2021.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831; people with speech disability may call TTY at 877-833-6341; people with impaired hearing may call Washington relay service at 711, email [ecyADAAcoordinator@ecy.wa.gov](mailto:ecyADAAcoordinator@ecy.wa.gov), visit <https://ecology.wa.gov/accessibility> for more information, by December 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are considering revisions to provide additional water quality and habitat protection for early life stages of salmonids, including salmon, steelhead, and trout, and their spawning gravels. These changes include:

- Revising the existing dissolved oxygen criteria to better protect early life stages of salmonids in gravel beds.
- Adding a dissolved oxygen requirement in freshwater gravel beds to provide a more direct measure of dissolved oxygen levels where early life stages live.
- Adding a dissolved oxygen saturation requirement to account for environmental factors that cause low dissolved oxygen levels such as high water temperature and elevation.
- Adding a narrative fine sediment criterion to provide additional protection for incubating salmonid eggs and larvae.

Reasons Supporting Proposal: The goal of this rule making is to ensure adequate oxygen levels and habitat conditions are maintained for salmonids at critical early life stages, and to protect aquatic life under varying water conditions.

Salmon and steelhead populations have been declining in Washington state for more than a decade. Salmonids play a pivotal role in the structure and health of our fresh and marine water ecosystems. Chinook salmon, for example, are the primary food for the endangered Southern Resident Orca, and the decline of Chinook is one of the main factors attributed to the decline of this orca population, according to the 2018 Southern Resident Orca Task Force Final Report. Migrating salmon and steelhead bring essential nutrients from the ocean back to rivers, streams, and surrounding habitat. These nutrients are a significant part of the freshwater food web. Salmonids represent one of the most sensitive aquatic life species in Washington and therefore form the basis for protecting all aquatic life uses, as defined in the water quality standards for surface waters of the state of Washington.

**a. Salmonids need adequate dissolved oxygen and habitat conditions for spawning:** Salmonid eggs and larvae incubate in freshwater gravels in lakes, rivers, and streams, and require specific dissolved oxygen (DO) levels to properly grow and develop. We are considering revising the DO criteria to ensure habitat conditions in gravel are optimal for salmonid spawning.

We also are considering the addition of a new criterion to limit the negative impacts of fine sediment and protect salmonid spawning gravel habitat. Fine sediments that settle over salmonid spawning gravels can prevent adequate flow of water through the gravels, depriving eggs and larvae of the oxygen they need. Currently, the water quality standards for surface waters of the state of Washington do not specifically address fine sediments. This rule-making process is not associated with the sediment management standards in chapter 173-204 WAC, which are managed by ecology's toxic cleanup program and are set to address toxic contaminants in sediment.

**b. Ecology has received federal, tribal, and public comment on revisions to protect salmonid spawning gravels:** In January 2003, we developed a discussion document and literature summary entitled Evaluating Criteria for the Protection of Aquatic Life in Washington's Surface Water Quality Standards for Fresh Water - Dissolved Oxygen (Hicks, 2002). This document proposed changes to the DO criteria as part of the 2003 rule making. Public comments questioned these proposed revisions and ecology postponed changes to the DO criteria until we could gather additional information.

In 2006, ecology revised the state's water quality standards for surface waters of the state of Washington. We did not revise the freshwater DO criteria at that time, although much review of the criteria was done prior to finalizing the rule. The Environmental Protection Agency (EPA)'s final Clean Water Act approval of the revised standards included consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fishery Service under Section 7 (a)(2) of the Endangered Species Act (ESA). That consultation concluded that EPA's approval action was

largely beneficial and would not jeopardize the continued existence of any endangered or threatened species. As part of that consultation, conditions were set forth to minimize any adverse effects to ESA-listed species, which included an evaluation of the DO criteria to protect aquatic life.

In January 2006, EPA, USFWS, NOAA Fisheries, and ecology met to discuss federal agency concerns about the DO criteria in the standard for protection of incubating salmonids. Ecology agreed to further study the relationship between surface water DO concentrations and intragravel dissolved oxygen (IGDO) concentrations. Ecology then established a work group to develop an IGDO study. The goal of the study was to investigate uncertainties that the current 9.5 mg/L water column criterion was sufficiently protective to meet IGDO salmonid requirements. The work group included staff from federal agencies, tribes, and other interested parties. As a result of the work group research and discussion, ecology published Washington State Dissolved Oxygen Standard: A Review and Discussion of Freshwater Intragravel Criteria Development (Brown and Hallock, 2009). Study conclusions include:

- A percent oxygen saturation criterion may be a more meaningful measure of oxygen conditions to protect spawning gravels than increasing the absolute DO criteria because it takes into account the effect of temperature on DO concentration.
- A direct measure of the DO concentration within spawning gravels is not a feasible criteria that can be effectively implemented.

This rule making seeks to resolve these conclusions to appropriately modify the freshwater DO criteria to better protect intragravel habitat by improving the water column DO criteria, incorporate a percent saturation element to the criteria, and protect spawning gravel substrate more directly by limiting fine sediment intrusion.

**c. We agreed to address fine sediments in the surface water quality standards**

Adding fine sediment criteria aligns with our agreement in the 2018 U.S. District Court Stipulated Order of Dismissal (Order) between Northwest Environmental Advocates (NWEA), EPA, and ecology. In the order, ecology agreed to propose fine sediment criteria to protect salmonid nests, known as redds. ["We committed to completing proposed language by October 18, 2021."

Statutory Authority for Adoption: RCW 90.48.035 provides clear and direct authority to ecology to revise the surface water quality standards (SWQS). Additionally, 40 C.F.R. 131.20 requires states and tribes with Federal Clean Water Act authority to periodically review and update the SWQS.

Statute Being Implemented: Chapter 90.48 RCW, Water pollution control.

Rule is necessary because of federal law, and state court decision, *NWEA v. USEPA and Northwest Pulp & Paper Association*. Stipulated Order of Dismissal. No. C14-196-RSM. Filed 10/18/18.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: For more information, see the Technical Support

Document, Ecology Publication 21-10-050, and the Preliminary Regulatory Analyses, Ecology Publication 21-10-057.

Name of Proponent: Ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Bryson Finch, Headquarters - Lacey, 360-407-7158; Implementation: Chad Brown, Headquarters - Lacey, 360-407-6128; and Enforcement: Vincent McGowan, Headquarters - Lacey, 360-407-6405.

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 Susan Braley, Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-764-6563; people with speech disability may call TTY at 877-833-6341; people with impaired hearing may call Washington relay service at 711, email [swqs@ecy.wa.gov](mailto:swqs@ecy.wa.gov).

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

**Small Business Economic Impact Statement (SBEIS)  
Relevant Information for State Register Publication**

**Proposed amendments to chapter 173-201A WAC  
Water Quality Standards for Surface Waters of the State  
of Washington. Salmon Spawning Habitat Protection**

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES:** The baseline for our analyses generally consists of existing rules and laws and their requirements. This is what allows us to make a consistent comparison between the state of the Washington with and without the proposed rule amendments.

For this rule making, the baseline includes:

- The existing rule, chapter 173-201A WAC.
- Chapter 90.48 RCW, Water pollution control.
- 40 C.F.R. 131.20 Water Quality Standards - State review and revision of water quality standards; requires states and tribes (with primacy for clean water actions) to periodically review and update the water quality standards.
- 018 U.S. District Court Stipulated Order of Dismissal.<sup>1</sup>

1 2018 U.S. District Court Stipulated Order of Dismissal  
<https://www.bdlaw.com/content/uploads/2018/10/NWEA-stip.pdf>.

The proposed rule amendments would make the following changes:

- Revising the freshwater DO criteria.
  - Adding the definitions of "Intragravel DO" and "Spatial median."
  - Setting more stringent water column DO criteria.
  - Adding an intragravel DO component to the DO criteria.
  - Adding an oxygen saturation component to the DO criteria.
  - Clarifying the habitat type and spatial extent for sample collection when evaluating intragravel DO.
- Adding a narrative fine sediment criterion to all existing and designated aquatic life uses for freshwater.

#### **Revising the freshwater DO criteria.**

The current DO 303(d) listings include some listings in which temperature may be the cause or a large contributing factor of the low DO values. The oxygen saturation criteria is anticipated to refine the 303(d) list to identify those waters that are low in DO largely due to nutrients, potentially reducing the number of 303(d) listings by removing those that are solely attributed to temperature. Those changes are not likely to affect dischargers' behavior because waters will be assessed separately for compliance with temperature and DO criteria. Given that the updated 303(d) listings will better identify which waters are impaired due to nutrients (better detected by percent oxygen saturation) and those affected by human-caused temperature increases (better identified by the temperature criteria) the actions necessary to bring the waterbody into compliance will be identified earlier in the water cleanup process. We do not anticipate more DO listings due to the additional compliance option of percent saturation, regardless of the DO concentration.

The proposed rule adds an intragravel DO component to the DO criteria. Because the rule proposes that compliance may be demonstrated through one or more of the DO criteria, this provides flexibility and potential cost savings (benefits) for the dischargers. A discharger would choose to monitor and report the intragravel DO parameter only if it expects the potential costs of the sampling to be less than the potential benefits (or cost savings) of verifying their compliance using the alternative method.

**Adding a narrative fine sediment criterion to all existing and designated aquatic life uses for freshwater:** The proposed rule would create costs and benefits by requiring an evaluation of anthropogenic sources of fine sediment that may adversely affect early life stages of salmonids and result in a waterbody impairment.

The rule would impact point and nonpoint dischargers differently. Point dischargers are regulated through permits. If a waterbody with a current permittee discharging sediments is listed as impaired for the new narrative fine sediment criterion, that permittee could incur monitoring costs.

It is likely that permitted dischargers already have sediment discharge controls in place due to technology-based limits, or via another parameter of concern (bacteria, metals, toxics, etc.) that binds to sediment. Therefore, any discharger

currently covered by the industrial stormwater or construction stormwater general permits would likely avoid investing into additional control technologies. The others, such as some with individual permits, may incur costs for sediment control actions.

**COSTS OF COMPLIANCE: EQUIPMENT:** Adding a narrative fine sediment criterion to all existing and designated aquatic life uses for freshwater may affect facility sites that contribute to nonpoint source pollution. To address these nonpoint sources, ecology develops a list of best management practices (BMPs) for each of the water quality pollution sources identified. Some sites will require very basic erosion and sediment control BMPs (mulch, silt fence, etc.), while others will need extensive treatment technologies (sediment ponds, filters, etc.). Many of the BMPs address more than one of the water quality issues, such as temperature, bacteria and chemical sediments, etc. Therefore, it is hard to identify which of the BMPs and costs associated with them would address the fine sediments uniquely.

Ecology's water quality combined funding program estimated the average cost to complete riparian restoration - one of the most common BMPs addressing nonpoint sediments is approximately \$15,500 per acre based on 33 previously funded grant agreements across the state from State Fiscal Years 2016 to 2019. Cost per acre varies based on specific site conditions and project scale. Costs range from approximately \$3,500 to \$35,000, depending on the extent of invasive species control, ease of access, plant stock quality, and if maintenance is included in the budget. Typically, larger scale projects have a lower cost per acre. These costs are associated with funding programs and include administrative costs, and costs tend to be higher than if landowners were implementing BMPs on their own.

If the pollutant comes from a set of diffuse sources (referred to as a nonpoint source), such as general urban, residential, farm runoff, or other land activities, that generate pollution discharges. To address these nonpoint sources, ecology develops a list of best management practices (BMPs) for each of the water quality pollution sources identified. Nonpoint dischargers of fine sediments would incur capital and operational costs. Some would require very basic erosion and sediment control BMPs (mulch, silt fence, etc.), while others would need extensive treatment technologies (sediment ponds, filters, etc.).

**COSTS OF COMPLIANCE: SUPPLIES:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

**COSTS OF COMPLIANCE: LABOR:** If a waterbody with a current permittee discharging sediments is listed as impaired for the new narrative fine sediment criterion, that permittee could incur monitoring costs. We assume that monitoring costs would be similar to monitoring costs for turbidity or total suspended solids (TSS). Ecology estimated these costs for sites with 1-5 acres at \$1,650 per year, and at \$2,721 per year for sites 5+ acres in the Small Business Economic Impact Analysis for Construction Stormwater General Permit (2021)<sup>2</sup>. The estimated 20-year present value for fine sediments monitoring costs is between \$20,271 and \$33,429, depending on the size of a site.

<sup>2</sup> <https://apps.ecology.wa.gov/publications/documents/2010022.pdf>.

**COSTS OF COMPLIANCE: PROFESSIONAL SERVICES:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

**COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS:** Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES:** We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in chapter 3 of this document. In this section, we estimate compliance costs per employee. As we do not know what industries would be affected by the rule, we used the list of industries currently reporting the TSS and turbidity measurements. We recognize that less, more, or other industries may be affected.

We used current employment security department (ESD)<sup>3</sup> data to estimate the average number of employees through all identified industries. Note that ESD data is collected at the facility level, not the business level of highest owner or operator.

<sup>3</sup> Employment Security Department/Labor Market and Economic Analysis (LMEA), March 2020.

This means:

- The small business number may be underestimated.
- The largest businesses' numbers is likely significantly underestimated.
- Any identified disparity may be larger than presented from the available data.

The average affected small business likely to be covered by the proposed rule amendments employs approximately nine people. The largest 10 percent of affected businesses employ an average of 855 people. Based on cost estimates in chapter 3, we estimated the following compliance costs per employee.

We cannot make an assumption that small sites have less employees or a riparian buffer project (or other BMP) would be less complex. Therefore, we compare small and large business with small and large sites; simple and complex projects.

**Table 1: Compliance costs per employee**

	\$ per employee, small business, small site	\$ per employee, small business, large site	\$ per employee, large business, small site	\$ per employee, large business, large site
Monitoring	2252	3714	24	39
Livestock Exclusion Fencing	464	4639	5	49
Riparian buffer (simple)	389	3889	4	41
Riparian buffer (complex)	3889	38889	41	409

We conclude the rule amendments potentially have disproportionate impacts on small businesses, and therefore

ecology must include elements in the rule amendments to mitigate this disproportion, as far as is legal and feasible.

**CONSIDERATION OF LOST SALES OR REVENUE:** Businesses that would incur costs could experience reduced sales or revenues if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: Inter-industry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time.

We cannot predict which existing dischargers would be included on updated 303(d) lists and what their TMDL would be. We also cannot predict what combination of BMPs and other technology controls an impacted discharger would use. Using the REMI E3+ model, we applied potential costs to various industries, based on current sediment monitoring data. We randomly applied cost range to one business in every identified industry (because of the high degree of the uncertainty), and combined them in one model. The higher end of the costs range where applied to "Forestry and logging" sector, which affected the results. Modeling results did not indicate significant impacts to industries. Output would decrease by \$1.3 million in year 2022 over all industries in the state, which in relative indicators shows as a decrease.

- 0.018 percent decrease from the baseline for "Forestry and logging,"
- 0.004 percent decrease for "Support activities for agriculture and forestry," and
- 0.002 percent for "Other wood manufacturing" in 2022.

This is due to the capital costs associated with BMPs implementation would occur in 2021. The monitoring costs did not show any effect on output, and therefore, revenue of the industries. These results are scalable based on the number of dischargers assumed to be impacted in each industry.

**MITIGATION OF DISPROPORTIONATE IMPACT:** The RFA (RCW 19.85.030(2)) states that:

"Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;

(e) Reducing or modifying fine schedules for noncompliance; or

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (see chapter 6 of PRA), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

The scope of this rule making was limited to revising the freshwater DO criteria and adding a fine sediment criteria to all existing and designated aquatic life uses for freshwater. We could not meet legally stated goals and objectives if the proposed rule amendments included reduced or variable water quality standards, recordkeeping, or reporting.

We included the following elements in the proposed rule amendments to reduce costs to small businesses. This rule making is reducing, modifying, or eliminating substantive regulatory requirements by providing alternative compliance options to the existing DO criteria. Because the rule proposes that compliance may be demonstrated through one or more of the DO criteria, this provides flexibility and potential cost savings (benefits) for the dischargers. A discharger would choose to monitor and report the intragravel DO parameter only if it expects the potential costs of the sampling to be less than the potential benefits (or cost savings) of verifying their compliance using the alternative method.

Updated DO criteria would enable the refinement of the list of impaired waters. The current DO 303(d) listings include some listings in which temperature may be the cause or a large contributing factor of the low DO values. The alternate criteria expressed in percent saturation would help to refine the list to identify those waters that are low in DO largely due to nutrients, potentially reducing the number of 303(d) listings by removing those that are solely attributed to temperature.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION:** We involved small businesses and local governments in its development of the proposed rule amendments, using:

- Water Quality Information Listserv:
  - Voluntary membership to stay informed on the salmon spawning habitat protection rule making.
- Public webinars:
  - Clark Regional wastewater district, Sunnyside Valley Irrigation District, Trout Unlimited, Clean Water ATS, Puget Sound Keeper Alliance, South Columbia Basin Irrigation District, The National Council for Air and Stream Improvement (NCASI), Northwest Environmental Advocates, Washington State Water Resources Association, RE Sources, Port of Longview, Parametrix, WSP, Port of Tacoma, Dell, Chelan PUD, Avista Corp, NW Fish-letter, Tupper Mack Wells PLLC, Skagit River System Cooperative, Skagit Fisheries [Fisheries] Enhancement Group.

- NWIFC, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, City of Tacoma, Washington Department of Natural Resources, City of Kirkland, Idaho department of environmental quality, Quileute Nation, Pierce County, City of Spokane, City of Seattle, Lower Columbia Fish Enhancement Group, US Bureau of Reclamation, City of Federal Way, Snohomish Conservation District, Pierce Conservation District, Snohomish County, US Department of Agriculture, City of Vancouver, Tacoma-Pierce County Health Department, King County, Tulalip Tribe, Spokane Tribe, Port Gamble S'Klallam Tribe, Suquamish Tribe, Environmental Protection Agency, City of Bainbridge, City of Vancouver, Chehalis Tribe, City of Bellingham, US Corp of Engineers, Skokomish Tribe, Lewis Conservation District, Thurston County, CRITFC, City of Vancouver, Quileute Tribe, Washington Department of Fish and Wildlife, Alaska Department of Environmental Conservation, Hoh Tribe, Klickitat County, Stillaguamish Tribe.
- Science Advisory Team:
  - Ashley Coble (NCASI), Chris Frissell (Salish Kootenai College), Brian Mattax (WSP).
  - Joy Archuleta (US Forest Service), Jennifer Arthur (Seattle Public Utilities), Jordan Bauer (Ecology), Seth Book (Skokomish Tribe), Joanna Crowe Curran (US Corp of Engineers), Lindsay Guzzo (EPA), Tim Hagen (Pierce County), Kirk Krueger (WA Fish and Wildlife), Patrick Lizon (Ecology), Glen Merritt (Ecology), Cleo Nuculae (Ecology), Ted Parker (Snohomish County), Cole Provence (Ecology), Rainy Rau (City of Vancouver), Keunyea Song (Ecology), Leanne Weiss (Ecology), Angela Zeigenfuse (Ecology).

**NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE:** The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2017>.

- 113310 Forestry and Logging
- 321912, 321918 Wood Product Manufacturing
- 332323 Fabricated Metal Product Manufacturing
- 423310, 423930 Merchant Wholesalers, Durable Goods
- 452319 General Merchandise Stores
- 488210 Support Activities for Transportation
- 561990 Administrative and Support Services
- 811122 Repair and Maintenance

**IMPACT ON JOBS:** We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule amendments would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment,

prices, and other economic variables across all industries in the state.

We cannot predict which existing dischargers would be included on updated 303(d) lists and what their TMDL would be. We also cannot predict what combination of BMPs and other technology controls an impacted discharger would use. Using the REMI E3+ model, we applied potential costs to various industries, based on current sediment monitoring data. We randomly applied cost range to one business in every identified industry (because of the high degree of the uncertainty), and combined them in one model. The higher end of the costs range where applied to "Forestry and logging" sector, which also affected the results of impact on jobs on the particular industry.

**Table 2: Impacts on jobs**

Industry	Initial Jobs Impact	Jobs Impact in 20 years
Whole state	8	0.25
Forestry and logging	1.7	0.005
Support activities for agriculture and forestry	1.4	0.005
Construction	0.8	0.007
Manufacturing	0.5	0.025
Wholesale trade	0.222	0.008
Retail trade	0.66	0.023
Transportation and warehousing	0.228	0.012

A copy of the statement may be obtained by contacting Susan Braley, Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-764-6560, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>, email [swqs@ecy.wa.gov](mailto:swqs@ecy.wa.gov).

October 18, 2021  
 Heather R. Bartlett  
 Deputy Director

AMENDATORY SECTION (Amending WSR 21-19-097, filed 9/17/21, effective 10/18/21)

**WAC 173-201A-020 Definitions.** The following definitions are intended to facilitate the use of chapter 173-201A WAC:

**"1-DMax" or "1-day maximum temperature"** is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of thirty minutes or less.

**"7-DADMax" or "7-day average of the daily maximum temperatures"** is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging

that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

**"Action value"** means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

**"Actions"** refers broadly to any human projects or activities.

**"Acute conditions"** are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

**"AKART"** is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

**"Ambient water quality"** refers to the conditions and properties of a surface water of the state as determined by the results of water samples, measurements, or observations.

**"Background"** means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

**"Best management practices (BMP)"** means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

**"Biological assessment"** is an evaluation of the biological condition of a water body using surveys of aquatic community structure and function and other direct measurements of resident biota in surface waters.

**"Bog"** means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, outflow.

**"Carcinogen"** means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

**"Chronic conditions"** are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

**"Combined sewer overflow (CSO) treatment plant"** is a facility that provides at-site treatment as provided for in chapter 173-245 WAC. A CSO treatment plant is a specific facility identified in a department-approved CSO reduction plan (long-term control plan) that is designed, operated and controlled by a municipal utility to capture and treat excess combined sanitary sewage and stormwater from a combined sewer system.

**"Compliance schedule" or "schedule of compliance"** is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

**"Created wetlands"** means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

**"Critical condition"** is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

**"Damage to the ecosystem"** means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal increases in habitat alteration which may create such stress in the long term.

**"Department"** means the state of Washington department of ecology.

**"Designated uses"** are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

**"Director"** means the director of the state of Washington department of ecology.

**"Drainage ditch"** means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

**"Ecoregions"** are defined using EPAs *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

**"Enterococci"** refers to a subgroup of fecal streptococci that includes *S. faecalis*, *S. faecium*, *S. gallinarum*, and *S. avium*. The enterococci are differentiated from other strepto-

cocci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

**"E. coli"** is a bacterium in the family Enterobacteriaceae named *Escherichia coli* and is a common inhabitant of the intestinal tract of warm-blooded animals, and its presence in water samples is an indication of fecal pollution and the possible presence of enteric pathogens.

**"Existing uses"** means those uses actually attained in fresh or marine waters on or after November 28, 1975, whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

**"Fecal coliform"** means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within twenty-four hours at 44.5 plus or minus 0.2 degrees Celsius.

**"Geometric mean"** means either the nth root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

**"Ground water exchange"** means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow down-gradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

**"Hardness"** means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO<sub>3</sub>).

**"Intake credit"** is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

**"Intragravel dissolved oxygen"** means the concentration of oxygen in the spaces between sediment particles in a streambed.

**"Irrigation ditch"** means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

**"Lakes"** shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than fifteen days.

**"Lake-specific study"** means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in µg/l, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

**"Mean detention time"** means the time obtained by dividing a reservoir's mean annual minimum total storage by the thirty-day ten-year low-flow from the reservoir.

**"Migration"** or **"translocation"** means any natural movement of an organism or community of organisms from one locality to another locality.

**"Migration for naturally limited waters"** is a subcategory of the aquatic life use of salmonid rearing and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

**"Mixing zone"** means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

**"Natural conditions"** or **"natural background levels"** means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

**"New or expanded actions"** mean human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

**"Nonpoint source"** means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

**"Permit"** means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

**"pH"** means the negative logarithm of the hydrogen ion concentration.

**"Pollution"** means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**"Primary contact recreation"** means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

**"Salmonid spawning, rearing, and migration for naturally limited waters"** is a subcategory of the aquatic life use of salmonid spawning, rearing, and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

**"Shoreline stabilization"** means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

**"Spatial median"** is the middle value of multiple ranked in-tragavel D.O. measurements taken within the sampling area.

**"Stormwater"** means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

**"Stormwater attenuation"** means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

**"Surface waters of the state"** includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

**"Temperature"** means water temperature expressed in degrees Celsius (°C).

**"Treatment wetlands"** means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or stormwater treatment. Treatment wetlands are considered part of a collection and treatment system, and generally are not subject to the criteria of this chapter.

**"Trophic state"** means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on total phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

**"Turbidity"** means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

**"Upwelling"** means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

**"USEPA"** means the United States Environmental Protection Agency.

**"Variance"** is a time-limited designated use and criterion as defined in 40 C.F.R. 131.3, and must be adopted by rule.

**"Wetlands"** means areas that are inundated or saturated by surface water or ground water at a frequency and duration

sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

"**Wildlife habitat**" means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

AMENDATORY SECTION (Amending WSR 20-02-091, filed 12/30/19, effective 1/30/20)

**WAC 173-201A-200 Fresh water designated uses and criteria.** The following uses are designated for protection in fresh surface waters of the state. Use designations for water bodies are listed in WAC 173-201A-600 and 173-201A-602.

(1) **Aquatic life uses.** Aquatic life uses are designated based on the presence of, or the intent to provide protection for, the key uses identified in (a) of this subsection. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state in addition to the key species described below.

(a) The categories for aquatic life uses are:

(i) **Char spawning and rearing.** The key identifying characteristics of this use are spawning or early juvenile rearing by native char (bull trout and Dolly Varden), or use by other aquatic species similarly dependent on such cold water. Other common characteristic aquatic life uses for waters in this category include summer foraging and migration of native char; and spawning, rearing, and migration by other salmonid species.

(ii) **Core summer salmonid habitat.** The key identifying characteristics of this use are summer (June 15 - September 15) salmonid spawning or emergence, or adult holding; use as important summer rearing habitat by one or more salmonids; or foraging by adult and subadult native char. Other common characteristic aquatic life uses for waters in this category include spawning outside of the summer season, rearing, and migration by salmonids.

(iii) **Salmonid spawning, rearing, and migration.** The key identifying characteristic of this use is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 - June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.

(iv) **Salmonid rearing and migration only.** The key identifying characteristic of this use is use only for rearing or migration by salmonids (not used for spawning).

(v) (~~(Non-anadromous)~~) **Nonanadromous interior redband trout.** For the protection of waters where the only trout species is a (~~(non-anadromous)~~) nonanadromous form of self-reproducing interior redband trout (*O. mykiss*), and other associated aquatic life.

(vi) **Indigenous warm water species.** For the protection of waters where the dominant species under natural conditions would be temperature tolerant indigenous nonsalmonid species. Examples include dace, redband shiner, chiselmouth, sucker, and northern pikeminnow.

(b) **General criteria.** General criteria that apply to all aquatic life fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, water temperature is measured by the 7-day average of the daily maximum temperatures (7-DADMax). Table 200 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 200 (1)(c)  
Aquatic Life Temperature Criteria in Fresh Water**

Category	Highest 7-DADMax
Char Spawning and Rearing*	12°C (53.6°F)
Core Summer Salmonid Habitat*	16°C (60.8°F)
Salmonid Spawning, Rearing, and Migration*	17.5°C (63.5°F)
Salmonid Rearing and Migration <b>Only</b>	17.5°C (63.5°F)
( <del>(Non-anadromous)</del> ) <u>Nonanadromous</u> Interior Redband Trout	18°C (64.4°F)
Indigenous Warm Water Species	20°C (68°F)

\*Note: Some streams have a more stringent temperature criterion that is applied seasonally to further protect salmonid spawning and egg incubation. See (c)(B)(iv) of this subsection.

(i) When a water body's temperature is warmer than the criteria in Table 200 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F).

(ii) When the background condition of the water is cooler than the criteria in Table 200 (1)(c), incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed 28/(T+7) as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every ten years on average.

(iv) Spawning and incubation protection. The department has identified waterbodies, or portions thereof, which require special protection for spawning and incubation in

ecology publication 06-10-038 (also available on ecology's website at [www.ecology.wa.gov](http://www.ecology.wa.gov)). This publication indicates where and when the following criteria are to be applied to protect the reproduction of native char, salmon, and trout:

- Maximum 7-DADMax temperatures of 9°C (48.2°F) at the initiation of spawning and at fry emergence for char; and
- Maximum 7-DADMax temperatures of 13°C (55.4°F) at the initiation of spawning for salmon and at fry emergence for salmon and trout.

The two criteria above are protective of incubation as long as human actions do not significantly disrupt the normal patterns of fall cooling and spring warming that provide significantly colder temperatures over the majority of the incubation period.

(v) For lakes, human actions considered cumulatively may not increase the 7-DADMax temperature more than 0.3°C (0.54°F) above natural conditions.

(vi) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

- (A) Be taken from well mixed portions of rivers and streams; and
- (B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(vii) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria

established for waters in subsection (1)(c) of this section or WAC 173-201A-600 through 173-201A-602:

(A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-day maximum (1-DMax) temperature at or below 23°C (73.4°F).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(viii) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** The D.O. criteria are measured in milligrams per liter (mg/L) or percent oxygen saturation. Table 200 (1)(d) lists the (~~1-day minimum~~) D.O. criteria for each of the aquatic life use categories. Compliance may be demonstrated through one or more of the D.O. criteria.

**Table 200 (1)(d)  
Aquatic Life Dissolved Oxygen Criteria in Fresh Water**

<b>Category</b>	<b><del>(Lowest)</del> Water Column (1-Day Minimum)</b>	<b>Intragravel* (1-Day Minimum)</b>
Char Spawning and Rearing	<del>((9.5))</del> 10 mg/L <u>or</u> 90% oxygen saturation	8.0 mg/L
Core Summer Salmonid Habitat	<del>((9.5))</del> 10 mg/L <u>or</u> 90% oxygen saturation	8.0 mg/L
Salmonid Spawning, Rearing, and Migration	<del>((8.0))</del> 10 mg/L <u>or</u> 90% oxygen saturation	8.0 mg/L
Salmonid Rearing and Migration <b>Only</b>	6.5 mg/L <u>or</u> 90% oxygen saturation	=
<del>((Non-anadromous))</del> <u>Nonanadromous</u> Interior Red-band Trout	<del>((8.0))</del> 10 mg/L <u>or</u> 90% oxygen saturation	8.0 mg/L
Indigenous Warm Water Species	6.5 mg/L <u>or</u> 90% oxygen saturation	=

\* Intragravel D.O. must be measured as a spatial median (see WAC 173-201A-020 Definitions).

(i) When a water body's D.O. is lower than the criteria in Table 200 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the D.O. of that water body to decrease more than 0.2 mg/L.

(ii) For lakes, human actions considered cumulatively may not decrease the dissolved oxygen concentration more than 0.2 mg/L below natural conditions.

(iii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every ten years on average.

(iv) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

(A) Be taken from well mixed portions of rivers and streams; ~~((and))~~

(B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge~~((-))~~; and

(C) Be taken within the same aquatic habitat area when measuring intragravel D.O.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 200 (1)(e) lists the maximum turbidity criteria for each of the aquatic life use categories.

**Table 200 (1)(e)  
Aquatic Life Turbidity Criteria in Fresh Water**

Category	NTUs
Char Spawning and Rearing	Turbidity shall not exceed: • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration Salmonid Rearing and Migration <b>Only</b>	Same as above.  Turbidity shall not exceed: • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.
<del>((Non-anadromous))</del> <u>Nonanadromous</u> Interior Redband Trout	Turbidity shall not exceed: • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
Indigenous Warm Water Species	Turbidity shall not exceed: • 10 NTU over background when the background is 50 NTU or less; or

Category	NTUs
	• A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(i) The turbidity criteria established under WAC 173-201A-200 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(A) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.

(B) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.

(C) For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.

(D) For projects working within or along lakes, ponds, wetlands, or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.

(f) **Aquatic life total dissolved gas (TDG) criteria.** TDG is measured in percent saturation. Table 200 (1)(f) lists the maximum TDG criteria for each of the aquatic life use categories.

**Table 200 (1)(f)  
Aquatic Life Total Dissolved Gas Criteria in Fresh Water**

Category	Percent Saturation
Char Spawning and Rearing	Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	Same as above.
Salmonid Rearing and Migration <b>Only</b>	Same as above.
<del>((Non-anadromous))</del> <u>Nonanadromous</u> Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(i) The water quality criteria established in this chapter for TDG shall not apply when the stream flow exceeds the seven-day, ten-year frequency flood.

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams that spill for anadromous juvenile fish as of the 2020 spill season. The elevated TDG levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The following special fish passage exemptions for the Snake and Columbia rivers apply when spilling water at dams is necessary to aid fish passage:

(A) TDG must not exceed:

- An average of one hundred fifteen percent as measured in the forebays of the next downstream dams and must not exceed an average of one hundred twenty percent as measured in the tailraces of each dam (these averages are calculated as an average of the twelve highest hourly readings in a calendar day, relative to atmospheric pressure); and

- A maximum TDG saturation level of one hundred twenty-five percent calculated as an average of the two highest hourly TDG measures in a calendar day during spillage for fish passage.

(B) To further aid fish passage during the spring spill season (generally from April through June), spill may be increased up to the following levels as measured at the tail-race fixed site monitoring location:

- A maximum TDG saturation level of one hundred twenty-five percent calculated as an average of the twelve highest hourly TDG measures in a calendar day; and

- A maximum TDG saturation level of one hundred twenty-six percent calculated as an average of any two consecutive hourly TDG measures.

These TDG criteria may be applied in place of (f)(ii)(A) of this subsection during spring spill operations when applied in accordance with the following conditions:

(I) In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria at hydropower dams shall be applied in accordance with Endangered Species Act consultation documents associated with spill operations on the Snake and Columbia rivers, including operations for fish passage. The Endangered Species Act consultation documents are those by which dams may legally operate during the time that the adjusted criteria in (f)(ii)(B) of this subsection are in use.

(II) Application of the tailrace maximum TDG criteria must be accompanied by a department approved biological monitoring plan designed to measure impacts of fish exposed to increased TDG conditions throughout the spring spill season. Beginning in the year 2021, plans must include monitoring for nonsalmonid fish species and must continue for a minimum of five years, and thereafter as determined by the department.

(III) TDG must be reduced to allowances specified in (f)(ii)(A) of this subsection if the calculated incidence of gas bubble trauma in salmonids (with a minimum sample size of fifty fish required weekly) or nonsalmonids (with a minimum sample size of fifty fish required weekly) exceeds:

- Gas bubble trauma in nonpaired fins of fifteen percent;

or

- Gas bubble trauma in nonpaired fins of five percent and gas bubbles occlude more than twenty-five percent of the surface area of the fin.

If gas bubble trauma exceeds these biological thresholds, additional monitoring must demonstrate the incidence of gas bubble trauma below biological thresholds before TDG can be adjusted to allowances specified in this subsection. Gas bubble trauma monitoring data shall be excluded from comparison to biological thresholds when higher than normal river flow contributes to excess spill above the ability to meet (f)(ii)(B) of this subsection. This monitoring data exclusion shall apply for one full calendar day after reduced river flow allows attainment of (f)(ii)(B) of this subsection.

(g) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 200 (1)(g) lists the pH levels for each of the aquatic life use categories.

**Table 200 (1)(g)  
Aquatic Life pH Criteria in Fresh Water**

Use Category	pH Units
Char Spawning and Rearing	pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	pH shall be within the range of 6.5 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
Salmonid Rearing and Migration <b>Only</b>	Same as above.
<del>((Non-anadromous))</del> Nonanadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(h)(i) Aquatic life fine sediment criterion. The following narrative criterion applies to all existing and designated uses for fresh water:

(ii) Water bodies shall not contain fine sediment (<2 mm) from anthropogenic sources at levels that cause adverse effects on aquatic life, their reproduction, or habitat. When reference sites are used, sediment conditions shall be compared to sites that represent least disturbed conditions of a neighboring or similar water body.

(2) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to fresh water recreational uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 200 (2)(b) lists the bacteria criteria to protect water contact recreation in fresh waters. These criteria are based on *Escherichia coli* (*E. coli*) and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform organism levels to determine compliance will expire December 31, 2020.

**Table 200 (2)(b)**

**Primary Contact Recreation Bacteria Criteria in Fresh Water**

Bacterial Indicator	Criteria
<i>E. coli</i>	<i>E. coli</i> organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained within the averaging period exceeding 320 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained within an averaging period exceeding 200 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criteria. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be thirty days or less.

(B) Ambient water quality samples: When averaging bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be ninety days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for rivers and streams that cause, or significantly contribute to, the decertification or conditional certification of commercial or recre-

ational shellfish harvest areas, even when the preassigned bacteria criteria for the river or stream are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(3) **Water supply uses.** The water supply uses are domestic, agricultural, industrial, and stock watering.

**General criteria.** General criteria that apply to the water supply uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

(4) **Miscellaneous uses.** The miscellaneous fresh water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

**General criteria.** General criteria that apply to miscellaneous fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

**WSR 21-21-082**

**PROPOSED RULES**

**CENTRAL WASHINGTON UNIVERSITY**

[Filed October 18, 2021, 3:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-010.

Title of Rule and Other Identifying Information: Chapter 106-125 WAC, Student conduct code, and WAC 106-08-050 Brief adjudicative proceedings.

Hearing Location(s): On November 23, 2021, at 11:00 a.m., at Central Washington University, 400 East University Way, Barge Hall 304, Ellensburg, WA. Attending remotely by Zoom, join <https://us02web.zoom.us/j/87398503155?pwd=b1FGeEhZVThjeGNUT08rRFRVeThvZz09>, Meeting ID 873 9850 3155, Passcode 498464, One tap mobile +12532158782,,87398503155#,,, \*498464# US (Tacoma) +16699006833,,87398503155#,,, \*498464# US (San Jose). Dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 873 9850 3155, Passcode 498464.

Date of Intended Adoption: February 18, 2022.

Submit Written Comments to: Kimberly J. Dawson, Rules Coordinator, Office of the President, 400 East University Way, Barge [Hall] 314, Ellensburg, WA 98926-7501, email [kimberly.dawson@cwu.edu](mailto:kimberly.dawson@cwu.edu), fax 509-963-3206, by November 23, 2021.

Assistance for Persons with Disabilities: Contact Kimberly J. Dawson, phone 509-963-2111, fax 509-963-3206, email [kimberly.dawson@cwu.edu](mailto:kimberly.dawson@cwu.edu), by November 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating and clarifying rules relating to student conduct and hearing procedures.

Statutory Authority for Adoption: RCW 28B.35.120.

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

Name of Proponent: Central Washington University, public and government.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joseph Bryant, Bouillon Hall 204, 509-963-1515.

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 rules are not "significant legislative rules" as defined under RCW 34.05.328(5).

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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

October 18, 2021  
Kimberly J. Dawson  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-08-050 Brief adjudicative proceedings.** (1)

The university will conduct brief adjudicative proceedings in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted.

(2) Except as otherwise provided by rule or as determined in a particular case by the university president (or designee), brief adjudicative proceedings shall be used to hear appeals of administrative actions relating to the following matters:

- (a) Parking and traffic citations;
- (b) Outstanding student debts or employee overpayments;
- (c) Student residency determinations;
- (d) Library fines;
- (e) Challenges to contents of student education records;
- (f) ~~((Loss))~~ Removal from student housing or denial of student eligibility ((for participation)) to participate in ((university)) intercollegiate athletics;
- (g) Student disciplinary action as defined under the student conduct code, except for a decision referring the matter to the student conduct council, a decision imposing a sanction of conduct suspension in excess of ten instructional days, or a decision imposing a sanction of conduct expulsion; or
- (h) Administrative decisions regarding mandatory tuition and/or fee waivers.

(3) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt and fair resolution of the matter.

(4) The administrative record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. Such records shall be maintained as the official record of the proceedings.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-010 Definitions.** The following definitions shall apply for purposes of this student conduct code:

(1) **Advisor of choice.** The "advisor of choice" is the person selected by a complainant or respondent to provide informal advice and support at any stage of a disciplinary proceeding under this student code. Except as otherwise provided in these rules, the role of the advisor of choice does not include representation of a party.

(2) **Complainant.** A "complainant" for purposes of this student code means any person who is the alleged victim or target of prohibited student conduct, whether or not such person has made an actual complaint.

~~((2))~~ (3) **Conduct officer.** The "conduct officer" or "student conduct officer" is the university official designated by the university to be responsible for initiating disciplinary action for alleged violations of this code.

~~((3))~~ (4) **Conduct review officer.** The "conduct review officer" is the university official designated by the university to hear appeals of disciplinary action conducted as brief adjudicative proceedings and to enter final decisions in proceedings heard by the student conduct council.

~~((4))~~ (5) **Consent.** The term "consent" for purposes of this code means knowing, voluntary, and clear permission and agreement, by actual words or conduct, to engage (or to continue engaging) in sexual activity. A person may be incapable of giving consent, or of diminished capacity to consent, by reason of age, threat or intimidation, lack of opportunity to consent, physical or mental impairment, drug or alcohol consumption, unconsciousness, or other cause. A person engages in nonconsensual sexual activity if the person knows, or reasonably should know, that the other person is of diminished capacity to consent or has in any way manifested lack of consent. Intoxication is not a defense against allegations of non-consensual sexual activity.

(6) **Day.** The term "day," unless otherwise qualified, means "calendar day." The qualified term "instructional day" means any day within an academic term that the university is open for business, excluding weekends and holidays.

~~((5))~~ (7) **Dean of student success.** The term "dean" or "dean of student success" means the chief student affairs officer of the university and includes any acting or interim dean designated by the president to perform the functions and duties of the dean under this student code.

~~((6))~~ (8) **Disciplinary action.** The term "disciplinary action" means the decision of the designated university official regarding alleged violations of the student code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include a summary suspension.

~~((7))~~ (9) **Filing and service.**

(a) **Filing.** The term "filing" means the delivery to the designated university official of any document that is required to be filed under this code. A document is filed by hand delivering it or by mailing it to the university official (or the official's assistant) at the official's office address. Filing is complete upon actual receipt during office hours at the office of the designated official.

(b) **Service.** The term "service" means the delivery to a party of any document that is required to be served under this code. A document is served by hand delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand delivered or actually deposited in the mail.

(c) **Electronic filing and service.** Unless otherwise provided, filing or service may be accomplished by electronic mail.

~~((8))~~ **(10) Party.** A "party" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment.

~~((9))~~ **(11) Preponderance of evidence.** The term "preponderance of the evidence" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

~~((10))~~ **(12) Respondent.** A "respondent" is a student against whom disciplinary action is initiated.

~~((11))~~ **(13) Service.** See "Filing and service."

~~((12))~~ **(14) Student.** The term "student" includes all persons taking courses at or through the university, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

~~((13))~~ **(15) University premises.** "University premises" shall include all campuses and electronic presences of the university, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, web sites, and other property owned, used, or controlled by the university.

**AMENDATORY SECTION** (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-020 Prohibited student conduct.** Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this section means "without limitation."

(1) **Academic dishonesty.** The term "academic dishonesty" for purposes of this student code includes cheating, plagiarism, and fabrication. Nothing in this student code shall be construed as limiting the authority of faculty and academic

administrators to assign academic consequences for these or other forms of academic misconduct.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, including collaboration without authority.

(b) **Plagiarism.** Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an academic assignment.

**(2) Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** An "alcohol violation" includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable university policies.

(b) **Cannabis/marijuana.** A "cannabis" or "marijuana violation" includes using, possessing, delivering, selling, or being under the influence of ~~((marijuana))~~ cannabis or the psychoactive compounds found in ~~((marijuana))~~ cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits any possession or use of marijuana on university premises or in connection with university activities.

(c) **Drug.** A "drug violation" includes using, possessing, delivering, selling, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** A "tobacco violation" means smoking or using tobacco products, electronic smoking devices (including e-cigarettes and vape pens), or other smoking devices in any area of university premises where smoking or tobacco use is prohibited in accordance with public law and university policy.

(3) **Disruptive or obstructive conduct.** The term "disruptive~~((or))~~ or obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the university. The term includes disorderly conduct, breach of the peace, violation of local or university noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of university investigations or disciplinary proceedings, including interfering with or retaliating against any witness, party, or other participant.

(4) **Ethics violations.** An "ethics violation" includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or university policy relating to the ethical use of university resources.

(5) **Failure to comply.** The term "failure to comply" means refusing to obey the lawful directive of a university official or authorized university body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

(6) **False or deceptive conduct.** The term "false (~~"or"~~) or deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of university records, furnishing false or misleading information to the university, falsely claiming an academic credential, or falsely accusing any person of misconduct.

(7) **Harassment.** The term "harassment" or "discriminatory harassment" means unwelcome and objectively offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently (~~(serious)~~) severe, pervasive, or persistent as to (~~(deny or limit)~~) have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s). Protected status includes a person's actual or perceived race, color, national origin, gender, disability, or other status protected by law. See "Sexual misconduct" for the definition of "sexual harassment."

(8) **Hazing.** "Hazing" includes any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes or is likely to cause the destruction or removal of public or private property or that causes or is likely to cause bodily danger or physical harm, or serious mental or emotional harm, to any student or other person.

(9) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, (~~(harassment, bullying, stalking)~~) invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(10) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of university property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and university trademarks.

(11) **Relationship violence.** The term "relationship violence" includes "domestic violence" and "intimate partner violence."

(a) **Domestic violence.** The term "domestic violence" means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated against a current or former spouse or intimate partner, current or former cohabitant, a person with whom one shares a child in common, or a person with whom one resides, including roommates.

(b) **Intimate partner violence.** The term "intimate partner violence," also known as dating violence, means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated by a person against another with whom one is or has been in a social relationship of a romantic or intimate nature. The existence of such a relationship will be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(12) **Retaliation.** The term "retaliation" means harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other university policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a university investigation or disciplinary proceeding.

~~((12))~~ (13) **Safety violations.** The term "safety violation" includes any nonaccidental conduct that interferes with or otherwise compromises any university policy, equipment, or procedure relating to the health, safety (~~(and)~~), or security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((13))~~ (14) **Sexual misconduct.** The term "sexual misconduct" includes "sexual harassment," "sexual (~~(intimidation)~~) exploitation," and "sexual violence."

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome and objectively offensive conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is directed at a person because of such person's sex or gender and that is sufficiently (~~(serious as to deny or limit, based on sex,))~~ severe, pervasive, or persistent as to have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s).

(b) **Sexual (~~(intimidation)~~) exploitation.** The term "sexual (~~(intimidation)~~" incorporates the definition of "sexual harassment" and) exploitation" means (~~(threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking),)~~) taking sexual advantage of another, without consent, for the gratification of oneself or any third person(s). The term includes voyeurism, indecent exposure, (~~(or)~~) the nonconsensual recording of nudity or sexual activity (~~(or)~~) where there is a reasonable expectation of privacy (or the nonconsensual distribution of such recording), inducing another person to engage in sexual activity for payment or other benefit, and knowingly exposing another to a sexually transmitted infection. (~~(Stalking means engaging in a course of conduct directed at a specific person that would cause a~~

reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.)

~~(c) Sexual violence.~~ The term "sexual violence" (~~incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, and sexual coercion. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.~~

~~(14))~~ includes "nonconsensual sexual contact" and "nonconsensual sexual intercourse."

(i) Nonconsensual sexual contact. The term "nonconsensual sexual contact" means any nonaccidental touching (including touching with any object) of the intimate parts of another person's body, clothed or unclothed, including a person's mouth, breasts, genital area, and buttocks, without the consent of the other person. The term also includes nonconsensual touching in a sexual manner of one's own intimate body parts, nonconsensual touching of another with one's own intimate body parts, removing another person's clothing without consent, or inducing a person without consent to touch their own or another person's intimate body parts.

(ii) Nonconsensual sexual intercourse. The term "nonconsensual sexual intercourse" includes any penetration, however slight, with any body part or object, of another person's mouth, vagina, or anus without the consent of the other person. The term also includes nonconsensual oral sex, with or without penetration.

(15) Stalking. The term "stalking," including cyberstalking, means a course of conduct, directed at a specific person, that involves repeatedly contacting, harassing, or following the person for no legitimate purpose, causing the person to have the same fear for the person's safety, the safety of others, or the security of property that a reasonable person in the same situation would experience under all the circumstances.

(16) Unauthorized access. The term "unauthorized access" means gaining entry without permission to any restricted area or property of the university or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

~~((15))~~ (17) University policy violations. The term "policy violation" means the violation of any (~~applicable law or~~) university policy or applicable law governing the conduct of students as members of the university community, including university policies governing nondiscrimination, alcohol and drugs, computer use, copyright, campus health and safety, and parking and traffic.

~~((16))~~ (18) Weapons violations. A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any

threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on university premises of any firearm or other dangerous weapon in violation of public law or university policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-030 Disciplinary sanctions.** The university may impose any of the following disciplinary sanctions for violations of this student code. Violations must be proved by a preponderance of the evidence.

(1) **Conduct reprimand.** A "conduct reprimand" is a written notice formally censuring a student for a student code violation and providing notice that a repeated violation will subject the student to more severe disciplinary action.

(2) **Conduct probation.**

(a) The term "conduct probation" means a specified period of time during which a student's continued enrollment will be conditioned on the student's compliance with specified requirements or restrictions. The probation may be for a limited term or may extend for the duration of the student's attendance at the university, depending on the nature and seriousness of the code violation(s). The sanction of conduct probation may be imposed in the form of a deferred suspension.

(b) Conditions placed on a student's continued enrollment may include, without limitation, any one or more of the following requirements or restrictions:

(i) Compliance with applicable standards of conduct under the student code and university policies;

(ii) Restitution, defined as payment of compensation for damage or loss caused to the university or any person as a result of the student's misconduct, or the assessment of such fines as may be authorized under specific university policies for violations of those policies;

(iii) Restrictions on the student's contact with specified individuals or groups, which may include an order that the student refrain from having any communication with the specified persons;

(iv) Restrictions on the student's access to specified university premises and/or limitations on the student's participation in university activities, which may include removal from or reassignment of student housing or denial of eligibility to participate in intercollegiate athletics;

(v) A requirement that the student receive education or participate in training relating to the student's misconduct, which may include other educational sanctions assigned for the purpose of facilitating student development and learning as deemed appropriate to the offense;

(vi) A requirement that the student be professionally evaluated by a qualified health care provider who is approved by the university and who is authorized by the student to discuss the evaluation with designated university officials, together with a requirement that the student comply with treatment recommendations relating to the student's ability to maintain appropriate standards of conduct.

(c) A student's failure to comply with the conditions of the conduct probation may result in further disciplinary action including, but not limited to, disciplinary suspension or permanent dismissal.

(3) **Conduct suspension.** A "conduct suspension" means a temporary dismissal from the university and the suspension of student status for a specified period of time with no refund of tuition or fees. Reenrollment following a disciplinary suspension may be conditioned on any of the requirements or restrictions that may apply to a conduct probation.

(4) **Conduct dismissal.** The term "conduct dismissal" means permanent expulsion from the university with no refund of tuition or fees and may include an order trespassing the student from university premises. A sanction of conduct dismissal shall be recorded on the student's academic transcript.

(5) **Other sanctions.** The following additional sanctions for student code violations may be imposed as required or permitted by law or university policy.

(a) **Athletics eligibility.** A student athlete found in violation of WAC 106-125-020 (2)(c), relating to drug violations, shall be ineligible to participate in university athletics pursuant to RCW 69.41.340. Eligibility to participate in intercollegiate athletics may be denied based on violations of other student conduct prohibited under WAC 106-125-020.

(b) **(Parental) Parent/guardian notification.** The university reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.

**AMENDATORY SECTION** (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-040 Disciplinary action—Initiation.**

(1) The student conduct officer will initiate disciplinary action by serving the student respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations or the issues involved, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violations(s).

(2) At the disciplinary meeting, the student conduct officer will review the allegations with the respondent and will afford the respondent an opportunity to respond. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.

(3) In a proceeding involving allegations of sexual misconduct or discriminatory harassment, the student conduct officer prior to taking disciplinary action will afford the complainant an opportunity to discuss the results of any investigation and the possible sanctions and/or conditions that could be imposed for the complainant's protection if the sexual misconduct or discriminatory harassment allegations are found to be substantiated.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) The conduct officer may dismiss the proceeding upon finding the allegations to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall

be final and not subject to appeal or further review, except as provided in proceedings involving allegations of sexual misconduct or discriminatory harassment.

(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 106-125-030. Such sanction(s) shall be subject to review on appeal as provided in this student code.

(c) The conduct officer may refer the matter for disciplinary action by the student conduct council. Such referral shall be in writing, to the attention of the dean of student success, with a copy served on the respondent (and any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment). The decision to refer shall not be subject to appeal or further review.

(5) Within ~~((ten))~~ 10 days of the initial disciplinary meeting, the conduct officer will serve the respondent (and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) with a written decision either dismissing or referring the matter or imposing disciplinary sanctions. If sanctions are imposed, the written decision will specify the conduct code provision(s) found to have been violated, will describe the facts and conclusions supporting the sanction(s), and will provide notice of any appeal rights.

(6) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether such allegations were substantiated and will describe any sanctions or conditions imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

**AMENDATORY SECTION** (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-045 Appeal and review procedures—General.** The following general rules apply to appeals or requests for further administrative review of disciplinary action at any stage of a student disciplinary proceeding.

(1) **Parties.** The parties to an appeal or review proceeding shall be the respondent, any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations, and the student conduct officer.

(2) **Filing of appeals.**

(a) **Appeal periods.** An appeal or request for review of disciplinary action must be filed with the designated university official within the applicable time period as further specified in these rules.

(b) **Contents of appeal.** A party's written notice of appeal or request for review must explain why the party disagrees with the disciplinary decision and what relief or remedy the party is requesting. The appeal or request for review must address one or more of the following grounds:

(i) **Insufficient evidence.** The disciplinary action taken was not supported by a preponderance of the evidence.

(ii) **New evidence.** New evidence not available at the time the disciplinary action was taken should result in a different outcome.

(iii) **Procedural or other error.** The disciplinary action was taken in violation of prescribed procedures or was based on an erroneous interpretation or application of the student conduct code.

(iv) **Disproportionate outcome.** The disciplinary action taken was not proportionate to the student conduct violation(s) alleged.

(c) **Failure to appeal.** The failure of a party to file a timely appeal or request for review at any stage of the proceeding waives that party's right to appeal. However, in a proceeding involving sexual misconduct or discriminatory harassment allegations, if any party appeals, the university official receiving the appeal or request for review will notify the other parties and will afford each party the opportunity to participate in the appeal or review proceeding.

(3) **Effect of appeal - Stay.** The implementation of disciplinary action imposing a conduct suspension of any length ~~((or imposing a))~~, removal from student housing, or conduct expulsion shall be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.

(4) **Reviewing authority.**

(a) Appeals of disciplinary action taken by the student conduct officer will be heard by the conduct review officer or student conduct council as further provided in these rules.

(b) Appeals of disciplinary action taken by the conduct review officer in a brief adjudicative proceeding will be heard by the dean of student success (or designee) as further provided in these rules.

(c) Appeals of disciplinary action ~~((recommended))~~ imposed by the student conduct council will be heard by the conduct review officer as further provided in these rules.

(5) **Ex parte communications.** Reviewing authorities (the conduct review officer, student conduct council members, and the dean) may not communicate with any of the parties regarding an appeal without providing notice and an opportunity for all parties to participate.

(6) **Disqualification.** Reviewing authorities may not participate in a proceeding in which they:

- (a) Are a complainant or witness;
- (b) Have a direct or personal interest, prejudice, or bias;

or

(c) Have previously acted in the same proceeding in another capacity.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-050 Disciplinary action—Appeals. (1) Respondent.** The student respondent may appeal the disciplinary action of the student conduct officer in accordance with the following rules:

(a) The respondent may appeal disciplinary action imposing a conduct reprimand, conduct probation, ~~((or))~~ conduct suspension not in excess of ~~((ten))~~ 10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics by filing a written notice of appeal with the conduct review officer within ~~((ten))~~ 10 days of service of the disciplinary decision.

(b) The respondent may appeal disciplinary action imposing a conduct suspension in excess of ~~((ten))~~ 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within ~~((twenty))~~ 20 days of service of the disciplinary decision.

(2) **Complainant.** The complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations may appeal the disciplinary action of the student conduct officer with respect to such allegations in accordance with the following rules:

(a) The complainant may appeal disciplinary action dismissing the proceeding or imposing a conduct reprimand, conduct probation, or conduct suspension not in excess of ~~((ten))~~ 10 days by filing a written notice of appeal with the conduct review officer within ~~((ten))~~ 10 days of service of the disciplinary decision.

(b) The complainant may appeal disciplinary action imposing a conduct suspension in excess of ~~((ten))~~ 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within ~~((twenty))~~ 20 days of service of the disciplinary decision.

(3) If no appeal is filed within the applicable time period, the disciplinary action of the student conduct officer shall be final.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-055 Conduct review hearings—Initial decision. (1) Conduct review officer - Authority.**

(a) The conduct review officer will hear a respondent's appeal of disciplinary action imposing a conduct reprimand, conduct probation, ~~((or))~~ conduct suspension not in excess of ~~((ten))~~ 10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics.

(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the conduct review officer will hear a complainant's appeal of disciplinary action dismissing the sexual misconduct or discriminatory harassment allegations or imposing, with respect to such allegations, a conduct reprimand, conduct probation, or conduct suspension not in excess of ~~((ten))~~ 10 days.

(c) The conduct review officer shall have the same authority as the student conduct officer to dismiss a proceeding, to impose a disciplinary sanction of conduct reprimand, conduct probation, or conduct suspension not in excess of ~~((ten))~~ 10 days, or to refer the matter for disciplinary action by the student conduct council.

(2) **Appeal hearing.** Appeals heard by the conduct review officer will be conducted as informal administrative hearings consistent with the rules for "brief adjudicative proceedings" under RCW 34.05.482 and WAC 106-08-050. The review officer shall provide each party an opportunity to explain the party's view of the matter.

(3) **Initial decision - Service.**

(a) Within ~~((ten))~~ 10 days of consideration of the appeal, the conduct review officer will serve an initial decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The initial decision will

explain the reasons for the decision and will provide notice of any right to request further administrative review.

(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the initial decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(c) A decision by the conduct review officer to refer the appeal to the student conduct council is not subject to further administrative review.

(4) **Initial decision - Request for review.** The respondent (or any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) may request administrative review of the initial decision by filing a written request for review with the dean of student success within ~~((twenty-one))~~ 21 days of service of the initial decision. If no request for review is filed, the initial decision of the conduct review officer shall be final.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-060 Conduct review hearings—Review of initial decision.** (1) Requests for review of the initial decision of the conduct review officer will be heard by the dean of student success (or designee). The dean shall have the same authority on review as the conduct review officer to take disciplinary action.

(2) The dean will review the hearing record and will afford the parties the opportunity to file written statements explaining their views of the matter. The dean may make any inquiries necessary to ascertain whether the proceeding should be referred to the student conduct council for a formal hearing.

(3) Within ~~((twenty))~~ 20 days of the date for the parties to submit written statements, the dean will serve a written review decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The review decision will explain the reasons for the decision and will provide a notice that judicial review may be available.

(4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(5) The review decision of the dean (or designee) shall be final.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-070 Student conduct council.** (1) The student conduct council shall consist of three ~~((students and two faculty members selected from a panel of eight full-time~~

~~students and six faculty members holding the rank of assistant professor or above who are appointed to the panel in accordance with procedures established respectively by student government and the faculty senate))~~ university employees appointed by the university president or president's designee. The conduct council members will be ~~((randomly))~~ selected by the council advisor subject to availability and qualification in accordance with WAC 106-125-045(6). Additional ~~((students and faculty))~~ university employees may be selected to serve as alternate council members.

(2) The student conduct council shall elect a chair to preside over the hearing, and the dean of student success shall appoint a nonvoting staff member as council advisor to convene and otherwise advise and assist the council.

(3) The student conduct council will hear appeals of disciplinary action imposing a conduct suspension in excess of ~~((ten))~~ 10 days or a conduct dismissal. The council will hear such other matters as may be referred to the council by the student conduct officer, conduct review officer, or dean of student success. The council shall have the authority to ~~((recommend dismissing))~~ dismiss a proceeding or to ~~((recommend imposing))~~ impose any of the disciplinary sanctions under WAC 106-125-030.

(4) Proceedings of the student conduct council shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and by the model rules of procedure (chapter 10-08 WAC), as supplemented by these rules.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-075 Student conduct council—Pre-hearing procedure.** (1) The conduct council chair or advisor shall cause all parties to be served with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair or advisor may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.

(2) The conduct council chair, assisted by the council advisor, is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.

(3) The council chair or advisor may direct the parties prior to the hearing to exchange lists of potential witnesses and copies of exhibits that the parties reasonably expect to present to the council. Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The council chair or advisor in advance of the hearing may provide council members with copies of (a) any notice of disciplinary action (or referral to the council) and (b) any notice of appeal filed by the respondent (or any complainant). However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) Any party may be accompanied at the hearing by ~~((a nonattorney))~~ an advisor of the party's choice. A respondent (or any complainant) may be represented by an attorney at such party's own cost, but will be deemed to have waived that

right unless, at least four instructional days before the hearing, the attorney files and serves a notice of appearance. If the respondent (or complainant) is represented by an attorney, the student conduct officer may be represented by the university's assistant attorney general.

(6) The student conduct council may itself be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-080 Student conduct council—Hearing procedure.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct council may either:

(a) Proceed with the hearing; or

(b) Serve an order of default in accordance with RCW 34.05.440.

(2) Council hearings shall be closed to the public, unless all parties (including any complainant) agree on the record that all or parts of the proceeding may be open. The council chair shall determine any extent to which the hearing will be open. The chair may exclude from the hearing any person who disrupts the proceeding.

(3) The council advisor shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the advisor selects. Other recording shall be permitted in accordance with WAC 10-08-190. The advisor shall maintain the official record of the proceeding that is required by RCW 34.05.476. Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

(4) The council chair shall preside at the hearing and shall decide procedural questions that arise during the hearing, except as overridden by a majority vote of the council.

(5) The student conduct officer (or assistant attorney general) shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) The respondent and a complainant in any proceeding involving sexual misconduct or discriminatory harassment allegations shall not directly question or cross-examine one another. All questions shall be directed to the council chair, who will act as an intermediary and pose questions on behalf of the parties. The council chair may reframe questions as to form or exclude questions on the grounds of relevance or privilege.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-085 Student conduct council—((Recommended)) Initial decision.** (1) At the conclusion of the hearing, the student conduct council shall permit the parties to make closing arguments in whatever form the council

wishes to receive them. The council may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((twenty))~~ 20 days following the later of the conclusion of the hearing or the receipt of closing arguments, the student conduct council shall issue ~~((a recommended))~~ an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The ~~((recommended))~~ decision shall contain findings on relevant issues of fact, conclusions concerning which, if any, provisions of the student code were found to be violated, and any ~~((recommended))~~ sanction(s) imposed. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The council chair shall cause the ~~((recommended))~~ initial decision to be served on the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether ~~((the sexual misconduct))~~ such allegations were substantiated and will describe any sanctions or conditions ~~((recommended))~~ imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(4) The council advisor, upon receipt of a timely filed appeal, shall promptly transmit the council's ~~((recommended))~~ initial decision and the record of the proceedings for review by the conduct review officer who shall enter a final decision. If no appeal is timely filed, the initial decision of the student conduct council shall be the final decision.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-090 Student conduct council—((Review)) Appeal of ((recommended)) initial decision.** (1) The ~~((recommended))~~ initial decision of the student conduct council will be reviewed on appeal by the conduct review officer. The conduct review officer shall have the same authority on review as the student conduct officer to take disciplinary action.

(2) The review by the conduct review officer will be limited to the hearing record made before the student conduct council. The conduct review officer will afford all parties the opportunity to file written statements explaining why they agree or disagree with the council's ~~((recommended))~~ initial decision. The conduct review officer may notify the parties that the review will be limited to reviewing the specific issues raised by the parties.

(3) The conduct review officer will serve a written decision upon all parties (including the complainant in any proceeding involving sexual misconduct or discriminatory harassment allegations) within ~~((twenty))~~ 20 days of the date for the parties to submit written statements. The decision will adopt or modify the conduct council's ~~((recommended))~~ initial decision and will provide a notice that reconsideration and/or judicial review may be available.

(4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any ((recommended)) disciplinary action imposed with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(5) The decision of the conduct review officer shall be final.

## SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

### NEW SECTION

**WAC 106-125-200 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 106 (the "Title IX Final Rule"). To the extent these supplemental hearing procedures conflict with the university's standard disciplinary procedures, WAC 106-125-005 through 106-125-090, these supplemental procedures shall take precedence.

### NEW SECTION

**WAC 106-125-201 Revocation by operation of law.** If any portion of the Title IX Final Rule is stayed or held invalid by a court of law, then the invalidated elements of the policy will be deemed revoked as of the publication date of the opinion or order.

### NEW SECTION

**WAC 106-125-205 Prohibited conduct under Title IX.** Pursuant to RCW 28B.35.120(12) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. § 1681, the university may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment." For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A student employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment harassment.** Hostile environment harassment, defined as unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual inter-

course includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(4) **Domestic violence.** Domestic violence, defined as physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating or intimate partner violence.** Dating or intimate partner, defined as physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or suffer substantial emotional distress.

### NEW SECTION

**WAC 106-125-210 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a university educational program or activity;

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure; and

(d) At the time of filing a formal complaint, the complainant was participating or attempting to participate in the educational program or activity.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations,

events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the university.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (d) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the university from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the student conduct code under WAC 106-125-020.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

#### NEW SECTION

**WAC 106-125-215 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct council and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
  - (ii) An advisor may be an attorney; and
  - (iii) The university will appoint the party an advisor of the university's choosing at no cost to the party, if the party fails to do so; and
- (f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

#### NEW SECTION

**WAC 106-125-220 Student conduct council.** For purposes of this supplemental Title IX procedure, the student conduct council shall consist of three university employees appointed by the university president (or designee) in accordance with WAC 106-125-070. The university may request an administrative law judge (ALJ) from the office of admin-

istrative hearings or other trained hearing officer to serve as the presiding officer in conducting the Title IX hearing.

#### NEW SECTION

**WAC 106-125-225 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct council will send a hearing notice to all parties, in compliance with WAC 106-125-075. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the conduct council chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the university intends to offer the evidence at the hearing.

#### NEW SECTION

**WAC 106-125-230 Rights of parties.** (1) The university's student conduct council hearing procedures, WAC 106-125-075, 106-125-080, and 106-125-085, and this supplemental procedure shall apply equally to all parties.

(2) The university bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the university's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 106-125-235 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) The conduct council chair shall review all questions for relevance and shall explain on the record the chair's reasons for excluding any question based on lack of relevance. Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(2) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(3) Unless this rule is abrogated by operation of law pursuant to WAC 106-125-201, if a party or witness does not

submit to cross-examination during the live hearing, the conduct council must not rely on any statement by that party or witness in reaching a determination of responsibility.

(4) Except as abrogated by operation of law pursuant to WAC 106-125-201, the conduct council may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(5) The conduct council shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 106-125-240 Initial decision.** (1) In addition to complying with WAC 106-125-085, the student conduct council will be responsible for conferring and drafting an initial decision that:

- (a) Identifies the allegations of sexual harassment;
- (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
- (c) Makes findings of fact supporting the determination of responsibility;
- (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
- (e) Contains a statement of, and rationale for, the conduct council's determination of responsibility for each allegation;
- (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
- (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the university's education programs or activities; and
- (h) Describes the appeal process for review of the conduct council's decision by the university's conduct review officer under WAC 106-125-090.

(2) The conduct council chair will serve the initial decision on the parties simultaneously.

#### NEW SECTION

**WAC 106-125-245 Appeal of initial decision.** (1) The parties shall have the right to appeal the initial decision of the student conduct council in accordance with the appeal procedures and timelines under WAC 106-125-045.

(2) The initial decision of the student conduct council shall be reviewed on appeal by the conduct review officer in accordance with this section and the appeal procedures under WAC 106-125-090.

(3) The conduct review officer will prepare a written review decision determining whether the grounds for appeal have merit, providing the rationale for this conclusion, and determining whether the disciplinary sanction(s) and condition(s) imposed in the initial decision are affirmed, vacated, or modified, and, if modified, setting forth any new disciplinary sanction(s) or condition(s).

(4) The conduct review officer shall serve the conduct review decision on the parties simultaneously.

(5) The decision of the conduct review officer shall be final.

#### **WSR 21-21-083**

#### **PROPOSED RULES**

#### **SECRETARY OF STATE**

[Filed October 18, 2021, 4:14 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-082.

Title of Rule and Other Identifying Information: Implementing legislation by permanent adoption of WAC changes related to voter registration list maintenance for persons convicted of felony crimes punishable by a term of total confinement at the department of corrections or incarceration in another state or federal facility, including WAC 434-324-106, 434-324-1065, and 434-324-107.

Hearing Location(s): On November 23, 2021, at 8:00 a.m., at 520 Union Avenue, Olympia, WA 98504. The hearing will be conducted using WebEx, to join the hearing a person can call the following telephone number 1-206-207-1700 and enter the meeting number or access code 2487 746 6207. People will be able to hear and comment.

Date of Intended Adoption: November 24, 2021.

Submit Written Comments to: Fina Ormond, P.O. Box 40229, Olympia, WA 98504, email [fina.ormond@sos.wa.gov](mailto:fina.ormond@sos.wa.gov), fax 360-664-4169.

Assistance for Persons with Disabilities: Contact Fina Ormond, phone 360-902-4146, fax 360-664-4169, email [Fina.ormond@sos.wa.gov](mailto:Fina.ormond@sos.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules in conformance with recent legislation.

Reasons Supporting Proposal: Consistency in operation in all county election offices within the state.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Proponent: Secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4151.

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.

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.

November 18, 2021  
Sheri Nelson  
Deputy Secretary of State

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

**WAC 434-324-106 Felony screening process—Potential match check.** (1) The ~~((law on when the))~~ right to vote is restored following a felony conviction ~~((is))~~ that includes serving a sentence of total confinement upon release from total confinement as established in RCW 29A.08.520.

(2)(a) The secretary of state must compare lists of persons held in total confinement for a felony conviction with the list of registered voters, to identify individuals appearing on both lists.

(b) Upon receiving new data, or at least on a monthly basis, the secretary must compare the voter registration records to lists of persons who ~~((are either incarcerated or on community supervision with))~~ have been:

(i) Convicted of a felony in Washington state court and are serving a sentence of total confinement under the jurisdiction of the Washington state department of corrections, ~~((and to lists of persons convicted in federal district courts with a sentence of at least fifteen months incarceration))~~ when lists of such persons are provided by the department of corrections.

(ii) Convicted by a federal court or any state court other than a Washington state court, when lists of such persons are provided by federal or other state authorities.

(3) The secretary must create a list of voters potentially ~~((under authority of DOC))~~ convicted of a felony as identified in subsection (1) of this section by matching the first name, last name, date of birth, and other identifying information.

~~((2))~~ (4)(a) For each voter identified through the process set forth in subsections (1) and (2) of this section, the secretary must change the voter's registration status to "pending ~~((status))~~" with a status reason that indicates the record is ~~((a potential felon))~~ for a person who is potentially ineligible to vote due to serving a sentence of total confinement for a felony conviction, or incarcerated for a felony conviction in a state other than Washington state or federal court.

(b) Voters with a pending status must not be issued a ballot.

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

**WAC 434-324-1065 Felony screening process—Mailing to potential matches.** (1) The secretary must mail a notification letter to each ~~((person under authority of DOC~~

~~whose status is pending cancellation))~~ registered voter identified through the process set forth in WAC 434-324-106.

(2) The notification letter must contain language informing the person:

(a) That they are potentially a voter whose status is pending cancellation:

(b) That they must contact their county auditor's office to contest the pending cancellation:

(c) That they may request a provisional ballot for any pending elections:

(d) That a person serving a sentence of total confinement under the jurisdiction of the department of corrections for a felony conviction, or currently incarcerated due to a felony conviction in another state or federal court loses the right to vote until the right is restored;

(e) Of the reason the person has been declared ineligible to vote;

(f) That the person's voter registration will be canceled due to their total confinement under the jurisdiction of the department of corrections for a felony conviction or incarceration in another state or federal prison for a felony conviction if they do not respond within 30 days from the date of the letter; and

(g) How to contest the pending cancellation.

(3) The notification letter must be sent to the person's last known registration mailing address and ~~((if the person is incarcerated or on community supervision with the department of corrections;))~~ to the person's address on file with the department of corrections ~~((address))~~ indicating that their voter registration is about to be canceled. ~~((The letter must contain language notifying the person that they must contact the auditor's office to contest the pending cancellation. The letter must also inform the person that they may request a provisional ballot for any pending elections. The notification letter must include:~~

(1) An explanation that a person under authority of DOC loses the right to vote until the right is restored;

~~((2))~~ (4) The notification letter must contain language informing the person that for a felony conviction in a Washington state court, the right to vote is restored as long as the person is not serving a sentence of total confinement ~~((or subject to community custody with))~~ under the jurisdiction of the department of corrections. For a felony conviction in another state or federal court, the right to vote is restored as long as the person is no longer incarcerated;

~~((3) The reason the person has been identified as ineligible to vote;~~

~~((4) An explanation that the person's voter registration will be canceled due to the felony conviction if they do not respond within thirty days from the date of the letter; and~~

~~((5) How to contest the pending cancellation.))~~ (5) The secretary must send to each auditor the voter registration ~~((and conviction))~~ status information for each matched person ~~((under authority of DOC registered in that county))~~ registered to vote in that county who has been identified as pending cancellation by this section.

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

**WAC 434-324-107 Felony screening process—Contesting cancellation or canceling.** (1) If a person (~~under authority of DOC~~) sent a notification by the secretary under the processes set forth in WAC 434-324-1065 fails to contact the auditor within (~~thirty~~) 30 days of the date of the letter, that person's voter registration must be canceled. If an election in which the person would otherwise be eligible to vote is scheduled to occur during the (~~thirty~~) 30 days, the person must be allowed to vote a provisional ballot. Any unreturned ballot issuances for the voter must be suspended and, if returned, held until the question of the person's eligibility can be resolved.

(2) The question of the person's eligibility (~~status~~) to vote may be resolved and the pending status reversed (~~without scheduling a hearing~~) if:

(a) The person provides (satisfactory documentation) verifiable information that the person is not serving a sentence of total confinement;

(b) The person's voting rights have been restored;

(c) The conviction is not a felony;

(d) The person convicted is not the registered voter;

(e) The person is no longer incarcerated due to a felony conviction in another state or federal court; or

(f) The person is otherwise eligible to vote. (The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation on the same basis.)

(3) ~~(If the person under the authority of DOC requests a hearing, the auditor must schedule a public hearing to provide the person an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the person would otherwise be eligible to vote is scheduled. The notice must be mailed to the person's last known registration mailing address and must be post-marked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.~~

(4) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence or custody or supervision information from the Washington department of corrections, the out-of-state court or prison, or the federal court or Bureau of Prisons, sufficient to prove by clear and convincing evidence that the person is ineligible to vote. It is not necessary that the copy of the document be certified.

(5) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the person's voting eligibility in time to hold a hearing prior to certification of an election in which the person would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the person's voting eligi-

~~bility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the person's voting eligibility prior to the next election in which the person would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation on the same basis.~~

~~(6) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the person would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the person is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The person must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the person's voting eligibility. If the person is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending status must be reversed and the secretary must flag the voter registration record to prevent future cancellation on the same basis. The person must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.~~

~~(7) If the person's voter registration is canceled after the person fails to contact the auditor within the thirty day period, the person may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (3) through (6) of this section.) If a ballot is received from a voter whose status was changed to "pending" in accordance with WAC 434-324-106 after ballots were issued, the ballot must be held until the question of the person's eligibility can be resolved.~~

The disposition of the ballot can be decided in the following ways:

(a) If the question of the voter's eligibility is resolved as stated in subsection (2) of this section, the ballot should be counted if otherwise valid.

(b) If the voter is verified as serving a sentence of total confinement under the jurisdiction of the department of corrections for a felony conviction or is currently incarcerated due to a felony conviction in a state other than Washington state or federal court, then the ballot should not be counted.

(c) If the voter's eligibility has not been resolved, then the canvassing board, prosecuting attorney, or their designees should attempt to acquire documentation and/or contact the department of corrections or other institution to verify whether the individual is serving a sentence of total confinement under the jurisdiction of the department of corrections for a felony conviction or is incarcerated due to a felony conviction in a state other than Washington state or federal court.

(d) If the voter's status cannot be verified, then the ballot should be counted if otherwise valid.

(4) The auditor must notify the voter and the secretary of state when their pending status is removed. The secretary must flag the voter registration record to prevent future cancellation on the same basis.

### WSR 21-21-089

#### PROPOSED RULES

#### BELLINGHAM TECHNICAL COLLEGE

[Filed October 19, 2021, 10:52 a.m.]

##### Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-085.

Title of Rule and Other Identifying Information: Amendments to WAC 495B-121-250, 495B-121-380, and 495B-121-390 to ensure the college is in compliance with recent federal caselaw, update appeal procedure, and add an invalidation provision.

Hearing Location(s): On November 30, 2021, at 11:00 a.m., at Bellingham Technical College, College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225. Join Zoom meeting, <https://btc-tech.zoom.us/j/81147516935>, Meeting ID 811 4751 6935, One tap mobile, +12532158782,,81147516935# US (Tacoma), +12063379723,,81147516935# US (Seattle).

Date of Intended Adoption: December 9, 2021.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email [rlaughter@btc.edu](mailto:rlaughter@btc.edu), fax 360-752-7134, by November 19, 2021.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email [ar@btc.edu](mailto:ar@btc.edu), by November 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 495B-121-380 are necessary as the result of a federal district court decision in Massachusetts (*Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021)), which vacated the part of 34 C.F.R. § 106.45 (b)(6)(i) that prohibits a decision-maker from relying on statements that are not subject to cross-examination during the hearing. In accordance with the court's order, the United States Department of Education (DOE) immediately ceased enforcement of the part of 34 C.F.R. § 106.45 (b)(6)(i) regarding the prohibition against statements not subject to cross-examination. Bellingham Technical College's Title IX regulations (WAC 495B-121-380) must also be updated to reflect this change.

Additional updates include clarification to the appeals procedure (WAC 495B-121-390) and a new invalidation provision in WAC 495B-121-250.

Reasons Supporting Proposal: The new language ensures that Bellingham Technical College is in compliance with recent federal caselaw and subsequent changes adopted by DOE regarding the prohibition against statements not subject to cross-examination (34 C.F.R. § 106.45 (b)(6)(i)). Additional updates are necessary to clarify the appeals procedure in WAC 495B-121-390 and to include a new invalidation provision in WAC 495B-121-250.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, and federal court decision, *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

Name of Proponent: Bellingham Technical College, public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michele Waltz, CS 201, 360-752-8440.

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. There are no costs imposed with the amendments to these rules.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

October 19, 2021  
Ronda Laughlin  
Executive Assistant  
to the President

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-250 General policies.** (1) Bellingham Technical College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Bellingham Technical College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure due process. Bellingham Technical College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.

(5) Bellingham Technical College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the grounds that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to

the appropriate civilian authorities or law enforcement agencies.

(6) If any provision of this code is invalidated by court order or operation of law, the affected provision of the code will no longer apply.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-380 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

~~(4) ((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~ No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

**WAC 495B-121-390 Appeals.** (1) ~~((The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495B-121-330.~~

~~(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary~~

~~sanction(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).~~

~~(3))~~ All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the response to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the response to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) President's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

## WSR 21-21-092

### PROPOSED RULES

### GAMBLING COMMISSION

[Filed October 19, 2021, 3:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-125.

Title of Rule and Other Identifying Information: New WAC 230-15-673 Paying out house jackpot prizes and 230-15-674 Keeping funds to pay house jackpot prizes; and amending WAC 230-15-050 Minimum cash on hand requirements.

Hearing Location(s): On December 7, 2021, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at [www.wsgc.wa.gov](http://www.wsgc.wa.gov). Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: December 7, 2021.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by November 29, 2021.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email [julie.anderson@wsgc.wa.gov](mailto:julie.anderson@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by November 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes address card room licensees keeping funds in a separate, off-site bank account, rather than on premises, maintaining funds, and paying out prizes.

Reasons Supporting Proposal: The gambling commission received a petition requesting that operators running house-banked jackpots be allowed to keep required jackpot money in a separate, off-site account rather than on premises. This change would address operator and player safety concerns. Rules are also needed to address maintaining funds and paying out prizes.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Ann Huysmans, Galaxy Gaming, Inc., private.

Name of Agency Personnel Responsible for Drafting: Adam Teal, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3475; Implementation: Tina Griffin, Interim Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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. A cost-benefit analysis is not required per RCW 34.05.328 (5)(a)(i).

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. The proposed changes were requested by Galaxy Gaming, Inc. to allow house-banked card room licensees the option to keep house-banked jackpots in a separate, off-site bank account rather than on premises to address operator and player safety concerns. Under the proposed rule changes, house-banked card room licensees may, but are not required to, keep house jackpots in a bank account rather than on premises. The proposed rule changes are not likely to impose more-than-minor costs to house-banked card room licensees.

October 15, 2021  
Ashlie Laydon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-03-024, filed 1/9/09, effective 2/9/09)

**WAC 230-15-050 Minimum cash on hand requirements.** (1) Card game licensees must have sufficient cash on hand to redeem all chips issued for play and pay out all prizes.

(2) Within three hours of opening for the business day, at a time included in the internal controls, house-banked card game licensees must have at least the following minimum amount of cash on premises in their cage, safe, and vault combined:

(a) One thousand dollars for each house-banked table on the gambling floor; plus

(b) The amount of the largest single prize available excluding progressive jackpot, player-supported jackpot, and house jackpot prizes (~~(when WAC rules require a deposit into a separate bank account (for example, player-supported jackpots and progressive jackpots))~~).

For example: If a house-banked card room has (~~fifteen~~) 15 house-banked tables and a largest single prize of (~~twenty-three thousand dollars~~) \$23,000, before opening, the cage must have at least (~~thirty-eight thousand dollars~~) \$38,000 on hand: 15 tables x \$1,000 = \$15,000 + largest single prize of \$23,000 = \$38,000.

(3) Except for the restrictions on player-supported jackpot pay outs in WAC 230-15-405 and progressive jackpot pay outs in WAC 230-15-690, licensees may pay prizes by check if sufficient funds are available on deposit.

(4) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud. Meeting the minimum cage cash amount does not relieve the licensee from the requirement to have sufficient funds available to redeem all chips and pay out all prizes.

#### NEW SECTION

##### **WAC 230-15-673 Paying out house jackpot prizes.**

(1) House-banked card room licensees must immediately pay out verified prizes of \$5,000 or less.

(2) For verified prizes over \$5,000, licensees must immediately pay out a minimum of \$5,000 and pay the remaining balance within 24 hours by check. The player may request that the licensee pay up to the entire prize balance by check. Licensees must then issue a check for the entire prize balance within 24 hours.

#### NEW SECTION

**WAC 230-15-674 Keeping funds to pay house jackpot prizes.** House-banked card room licensees must maintain at least the amount of the single largest house jackpot prize offered in a bank, mutual savings bank, or credit union located in Washington. Licensees must maintain a monthly record showing the daily amount of each house jackpot prize offered.

**WSR 21-21-093**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed October 19, 2021, 3:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-154 and 20-01-117.

Title of Rule and Other Identifying Information: WAC 230-03-210 Applying for a gambling service supplier license.

Hearing Location(s): On December 7, 2021, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at [www.wsgc.wa.gov](http://www.wsgc.wa.gov). Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: December 7, 2021.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by November 29, 2021.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3453, TTY 360-486-3637, email [julie.anderson@wsgc.wa.gov](mailto:julie.anderson@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by November 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is considering amending its rules to include performing the testing and certification of sports wagering systems and gambling equipment as required by Title 230 WAC as a service requiring a gambling service supplier license.

Reasons Supporting Proposal: The gambling commission recently adopted rules to address licensing and regulation, and licensing fees consistent with the Gambling Act and recently negotiated Tribal-state sports wagering compact amendments. As part of these compact amendments, sports wagering systems need to be tested and certified by an independent testing lab to ensure they meet or exceed GLI-33 standards and provisions outlined in compact and appendices. Independent testing labs must be licensed by both the tribe(s) and the Gambling commission. Independent testing labs are currently licensed by the gambling commission through a gambling service supplier license to provide testing and certification of tribal lottery systems, however, this rule must be amended to also include sports wagering systems as a service requiring licensure.

The gambling commission took final action on rules requiring an independent testing lab, licensed by the gambling commission, to perform testing and certification of electronic raffle systems to ensure the system meets or exceeds GLI-31 and complies with Washington gambling laws and rules before the electronic raffle system will be authorized to be brought into this state. Therefore, the gambling service supplier rule needs to be amended to include performing the testing and certification of gambling equipment as required by rule as a service requiring licensure.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Teal, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3475; Implementation: Tina Griffin, Interim Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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. A cost-benefit analysis is not required per 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(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

October 15, 2021  
 Ashlie Laydon  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-15-060, filed 7/15/19, effective 8/15/19)

**WAC 230-03-210 Applying for a gambling service supplier license.** (1) You must apply for a gambling service supplier license if you perform any of the following gambling-related services for compensation:

(a) Consulting or advisory services regarding gambling activities; or

(b) Gambling management services; or

(c) Financing for more than one licensee for purchases or leases of gambling equipment or financing for providing infrastructure or facilities, or equipment that supports gambling operations:

(i) Once you have financed more than one licensee, you must be a licensed gambling service supplier until all loans with licensees or previous licensees are paid; or

(ii) Once you have been a licensed gambling service supplier, you must be licensed as a gambling service supplier again before financing purchases or leases for any licensee; or

(d) Acting as a lending agent, or loan servicer, or placement agent; or

(e) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer; or

(f) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or

(g) Training individuals to conduct authorized gambling activities; or

(h) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission; or

(i) Performing the testing and certification of tribal lottery systems and sports wagering systems in meeting requirements specified in ~~((the))~~ tribal-state compact; or

(j) Performing the testing and certification of gambling equipment as required by Title 230 WAC; or

(k) Providing nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services exceed ~~((thirty thousand dollars))~~ \$30,000 during any permit period or license year.

(2) You do not need a gambling service supplier license if you are:

(a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or

(b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or

(c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; or

(d) A person who only provides nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services do not exceed ~~((thirty thousand dollars))~~ \$30,000 during any permit period; or

(e) A person who provides names, images, artwork or associated copyrights, or trademarks, or patent use, or other features that do not affect the results or outcome of the game, for use in gambling equipment; or

(f) Regulated lending institutions; or

(g) A licensed distributor who provides any of the following services for compensation:

(i) Training to licensed and potential punch board/pull-tab operators; or

(ii) Providing assistance to gambling license applicants or licensees seeking gambling license renewal.

**WSR 21-21-094**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed October 19, 2021, 3:24 p.m.]

Supplemental Notice to WSR 21-13-165.

Preproposal statement of inquiry was filed as WSR 20-15-154.

Title of Rule and Other Identifying Information: New WAC 230-19-005 Sports wagering definitions, 230-19-010 Sports wagering vendors must ensure sports wagering vendor representatives are licensed, 230-19-015 Accounting records for sports wagering vendors, 230-19-020 Sales records for sports wagering vendors, 230-19-025 Sports wagering integrity, 230-19-030 Integrity monitoring provider requirements, 230-19-035 Sports wagering system requirements, 230-19-040 Geofence and geolocation requirements, and 230-19-045 Records retention for sports wagering vendors.

Hearing Location(s): On December 7, 2021, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at [www.wsgc.wa.gov](http://www.wsgc.wa.gov). Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: December 7, 2021.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by November 29, 2021.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email [julie.anderson@wsgc.wa.gov](mailto:julie.anderson@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by November 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On March 25, 2020, Governor Jay Inslee signed HB 2638 authorizing sports wagering for Class III tribal facilities under terms negotiated in Tribal-state compacts, and adding or amending several sections of the Gambling Act giving the gambling commission the authority to adopt and/or amend rules needed for the state's regulation of sports wagering. The proposed rules create a regulatory framework for sports wagering consistent with the Gambling Act and Tribal-state compact amendments.

Draft language was initially filed under WSR 21-13-165. Changes from the initial language include: Revision of definitions and removal of language that is addressed in Tribal-state compact, such as information sharing, sports wagering system requirements, and sports wagering accounts.

Reasons Supporting Proposal: The proposed rules are designed to work in combination with each tribal gaming agency's regulatory authority to determine suitability for continued licensure of sports wagering vendors and bridge gaps in areas where Tribal-state compact amendments don't outline specific sports wagering vendor requirements, areas where more detail is necessary for enforcement, and areas where non-tribal sports wagering vendor-related activities may require information sharing.

Statutory Authority for Adoption: RCW 9.46.0364, 9.46.0368, 9.46.037, 9.46.038, 9.46.210.

Statute Being Implemented: RCW 9.46.0364, 9.46.0368, 9.46.037, 9.46.038, 9.46.070, 9.46.190, 9.46.240.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Teal, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3475; Implementation: Tina Griffin, Interim Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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. A cost-benefit analysis is not required per 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(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

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. The proposed rules are necessary for the effective regulation of sports wagering consistent with the Gambling Act and Tribal-state compact amendments. Recordkeeping requirements are required to determine suitability of continued licensure of sports wagering vendors and are common business practices and therefore unlikely to impose any additional costs.

October 15, 2021  
Ashlie Laydon  
Rules Coordinator

## Chapter 230-19 WAC SPORTS WAGERING

### NEW SECTION

**WAC 230-19-005 Sports wagering definitions.** Definitions for sports wagering used in the chapter are:

(1) "Integrity monitoring provider" means an independent organization licensed to receive and analyze data and reports of unusual wagering activity from a sports wagering operation for the purpose of assisting in identifying suspicious wagering activity.

(2) "Mobile device" means a portable electronic equipment used in mobile sports wagering, for example a smartphone.

(3) "Mobile sports wagering" means any sports wagering on a platform that is deployed and accessed through the internet or an application installed on a mobile device.

(4) "Sports wagering kiosk" means a self-service automated device used by patrons to make wagers on sporting events, obtain wagering information, redeem sports wagering vouchers and wagering tickets, and any other automated functions used for sports wagering.

(5) "Sports wagering system" means all equipment, hardware, data networks, communications technology, and software used in a sports wagering operation and that directly affect the wagering and results of sports wagering including, but not limited to:

(a) Interactive components, including all associated equipment and software that comprise the sports wagering platform used by a sports wagering operation or for online or mobile sports wagering;

(b) Sports wagering kiosks; and

(c) Ticket or voucher redemption devices.

This does not include a mobile device owned and used by a patron to place a sports wager.

(6) "Sports wagering vendor" means all three sports wagering license types: Major, mid-level, and ancillary identified in this chapter unless identified otherwise in these rules.

(7) "Sports wagering vendor representative" means all three sports wagering vendor representative types: Major, mid-level, and ancillary identified in this chapter unless identified otherwise in these rules.

(8) "Suspicious wagering activity" means unusual wagering activity that cannot be explained and is indicative of illegal activity including, but not limited to: Money laundering, match fixing, manipulation of an event, misuse of inside information, or other activity that is prohibited by federal, state, tribal, or local law.

(9) "Unusual wagering activity" means abnormal wagering activity or pattern of behavior exhibited by one or more patrons as a potential indicator of suspicious activity. Abnormal wagering activity may include, but is not limited to, the size of a person's wager or increased wagering volume on a particular event or wager type and/or other deviations readily apparent based on prior wagering history.

### NEW SECTION

**WAC 230-19-010 Sports wagering vendors must ensure sports wagering vendor representatives are licensed.** (1) Sports wagering vendors must ensure all sports wagering vendor representatives are licensed as required by rule.

(2) Sports wagering vendors must take all measures necessary to prevent an unlicensed sports wagering vendor representative from working in our state.

### NEW SECTION

**WAC 230-19-015 Accounting records for sports wagering vendors.** Sports wagering vendors must keep and maintain a complete set of records consistent with those kept by manufacturers and distributors as required by WAC 230-16-185 for their licensed activity in this state.

### NEW SECTION

**WAC 230-19-020 Sales records for sports wagering vendors.** Sports wagering vendors must keep the following:

(1) **Sales invoices and credit memos** - Document each sale of equipment or services, any return or refund, or any other type of transfer of sports wagering equipment in the state, with a standard sales invoice and credit memo. These records must include:

(a) The date of sale. The date of delivery must also be entered if different from the date of sale; and

(b) The customer's name and complete business address; and

(c) A description of each item sold, or service provided; and

(d) The quantity and price of each item; and

(e) The gross amount of each sale, including all discount terms and the total dollar amount of any discount.

(2) **Sales journal** - Keep a monthly sales journal for transactions in the state containing, at least:

(a) Each date of sale; and

- (b) Each sale invoice number; and
- (c) The name of the person paying; and
- (d) Sale categorized by the sports wagering goods, equipment, or services sold; and
- (e) The total amount of each invoice.

NEW SECTION

**WAC 230-19-025 Sports wagering integrity.** All sports wagering vendors and sports wagering vendor representatives, except for integrity monitoring providers, must:

- (1) Monitor for unusual and suspicious wagering activity; and
- (2) Promptly notify us, in the format we require:
  - (a) Upon any discovery of a violation or a suspected violation of chapter 9.46 RCW, this chapter, or other federal, state, tribal, or local statute, ordinance, administrative rule, or court order; and

(b) When unusual wagering activity or suspicious wagering activity is identified, including changes with the status of, or information related to, a previously reported unusual or suspicious wagering activity.

In the event the unusual or suspicious activity involves a tribal operator in Washington state, the sports wagering vendor or sports wagering vendor representative must promptly notify the appropriate tribal gaming agency; and

(3) Provide sports wagering information to us, or to an integrity monitoring provider(s), designated by us, when requested. Information related to sports wagering activity at a specific tribal operator in Washington state will first be requested, by us, through that tribal gaming authority pursuant to a tribal-state sports wagering compact amendment.

NEW SECTION

**WAC 230-19-030 Integrity monitoring provider requirements.** Integrity monitoring providers must:

- (1) Immediately notify us, in the format we require:
  - (a) Upon any discovery of a violation or a suspected violation of chapter 9.46 RCW, this chapter, or other federal, state, tribal, or local statute, ordinance, administrative rule, or court order; and
  - (b) When unusual wagering activity or suspicious wagering activity is identified, including changes with the status of, or information related to, a previously reported unusual or suspicious wagering activity.

In the event the unusual or suspicious activity involves a tribal operator in Washington state, the integrity monitoring provider must immediately notify the appropriate tribal gaming agency; and

(2) Have systems to receive and analyze sports wagering data and information to be able to monitor, identify, and report on unusual or suspicious wagering activity; and

(3) Provide us access to required sports wagering information to assist us with integrity monitoring and investigations; and

(4) Immediately notify us, and all other integrity monitoring providers, sports wagering operators, and all other agencies or organizations as directed by us, on any previously reported unusual wagering activity it finds rises to the level of suspicious wagering activity.

NEW SECTION

**WAC 230-19-035 Sports wagering system requirements.** (1) Sports wagering vendors must be licensed before the sale or delivery of a sports wagering system(s) to be used in our state.

(2) All sports wagering systems must meet or exceed Gaming Laboratory International GLI-33: Standards for Event Wagering Systems, including appendices and amendments, and must be approved by the tribal gaming agency where the system is to be installed and operated.

NEW SECTION

**WAC 230-19-040 Geofence and geolocation requirements.** (1) Mobile sports wagering must be contained to an approved tribal gaming facility premises as approved pursuant to each tribal-state sports wagering compact amendment. Sports wagering vendors will have geofence and geolocation compliance and monitoring controls to ensure wagers cannot be placed in violation of federal, state, or tribal laws and rules.

(2) Geofence and geolocation systems must be maintained and capable of:

- (a) Detecting and mitigating existing and emerging threats to the security of the geolocation system; and
- (b) Verifying the patron or device location.

NEW SECTION

**WAC 230-19-045 Records retention for sports wagering vendors.** Where applicable, sports wagering vendors must retain the following records:

- (1) For at least five years:
  - (a) Suspicious wagering activity; and
  - (b) Unusual wagering activity.
- (2) For at least three years at the end of their fiscal year:
  - (a) All required accounting records;
  - (b) Sales invoices;
  - (c) Sales journals; and
  - (d) Credit memos.
- (3) Data related to odds and line setting must be kept for at least two years.

**WSR 21-21-100****PROPOSED RULES****OFFICE OF THE****INSURANCE COMMISSIONER**

[Insurance Commission Matter R 2021-15—Filed October 19, 2021, 5:43 p.m.]

Supplemental Notice to WSR 21-19-139.

Preproposal statement of inquiry was filed as WSR 21-14-076.

Title of Rule and Other Identifying Information: FAIR (fair access to insurance requirements) plan committee members.

Hearing Location(s): On December 2, 2021, at 2:30 p.m. Zoom meeting: Detailed information for attending the Zoom

meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/fair-plan-committee-members-r-2021-15>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: December 3, 2021.

Submit Written Comments to: Shari Maier, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by December 2, 2021.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [MelanieW@oic.wa.gov](mailto:MelanieW@oic.wa.gov), by December 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update references to associations involved in the plan administration and make technical changes that should make the rules clearer and easier to follow.

Reasons Supporting Proposal: The two associations currently named in the rules merged and operate under a new name.

Statutory Authority for Adoption: RCW 48.02.060, 48.01.030, 48.18.480.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7173; Implementation: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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. OIC has determined that under this rule is exempt from a cost-benefit analysis under RCW 34.05.328 [(5)] (b)(iv):

- RCW 34.05.328 (5)(b)(iv) - this rule making will only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect and is exempt from RCW 34.05.328 (1)(c).

This rule making involves replacing references to two associations by name to a generic association reference. Additional technical changes are included to improve rule clarity.

OIC determines that this rule is exempt from cost benefit analysis requirements.

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 only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry<sup>1</sup> ..." The small

business economic impact statement must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... To determine whether the proposed rule will have a disproportionate cost impact on small businesses<sup>2</sup>."

<sup>1</sup> RCW 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

<sup>2</sup> RCW 19.85.040: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under

- RCW 19.85.025(3) - provides exclusions under RCW 34.05.310 (4)(d), it corrects/clarifies existing language.

This rule making involves replacing references to two associations by name to a generic association reference. Additional technical changes are included to improve rule clarity.

OIC determines that this rule is exempt from small business economic impact statement requirements.

October 19, 2021

Mike Kreidler

Insurance Commissioner

**AMENDATORY SECTION** (Amending WSR 14-21-179, filed 10/22/14, effective 11/22/14)

**WAC 284-19-140 Administration.** (1) This program shall be administered by a governing committee (referred to as the committee) of the facility, subject to the supervision of the commissioner, and operated by a manager appointed by the committee.

(2) The committee consists of nine members, including ~~((five))~~ six insurers, ~~((elected from each of the following))~~ as follows:

(a) ~~((American Insurance Association (one member);))~~ Property insurers represented by any trade association(s) shall designate or elect three members. Any such trade association not already represented on the committee may request representation by contacting the FAIR plan manager. The allocation of these three committee members will be made in accordance with applicable committee operating procedures and directives;

(b) ~~((Property Casualty Insurers Association of America (two members);~~

~~((+)))~~ All other stock insurers shall elect ((+)) one member((+)) by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in this respective group; ~~((and~~

~~((+)))~~ (c) All other nonstock insurers shall elect ((+)) one member((+)) by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in this respective group;

(d) A sixth member (~~(shall)~~) must be an insurer designated as the service insurer under the program(~~(-)~~), and the commissioner shall designate a sixth member if there is more than one service insurer(~~(-)~~);

(e) The other three members are individuals who are appointed by the commissioner to serve, none of whom have a direct or indirect interest in any insurer except as a policyholder(~~(- The individual members serve for a period of one year or until their successors are appointed.)~~);

(f) Not more than one insurer in a group under the same management or ownership shall serve on the committee at the same time(~~(-)~~); and

(g) One of the six insurers on the governing committee (~~(shall)~~) must be a domestic insurer.

(3) The governing committee may issue operating procedures and other directives to carry out the purposes of this plan and directives of the commissioner.

(4) Each person serving on the committee or any subcommittee, each member of the facility, and each officer and employee of the facility shall be indemnified by the facility against all costs and expenses actually and necessarily incurred in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being or having been a member of the committee, or a member or officer or employee of the facility except in relation to matters as to which he or she has been judged in such action, suit, or proceeding to be liable by reason of willful misconduct in the performance of duties as a member of the committee, or a member or officer or employee of the facility. This indemnification does not apply to any loss, cost, or expense on insurance policy claims under the program. Indemnification is not exclusive of other rights to which such member or officer may be entitled as a matter of law.

(5) Members on the committee serve for a period of one year or until successors are elected, designated or appointed, as applicable.

AMENDATORY SECTION (Amending WSR 98-13-095, filed 6/16/98, effective 7/17/98)

**WAC 284-19-150 Annual and special meetings.** (1) There shall be an annual meeting of the insurers on a date fixed by the committee. (~~(The three associations (WAC 284-19-140(2)) shall designate or elect their representatives to the committee. The two nonassociation groups of companies shall elect their respective representatives by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in the respective groups of companies. Representatives on the committee shall serve for a period of one year or until successors are elected or designated.)~~)

(2) A special meeting may be called at a time and place designated by the committee or upon the written request to the committee of any ten insurers, not more than one of which may be a group under the same management or ownership.

(3) Twenty days' notice of the annual or special meeting (~~(shall)~~) must be given in writing by the committee to the insurers. A majority of the insurers constitutes a quorum. Voting by proxy is permitted. Notice of any meeting (~~(shall)~~) must be accompanied by an agenda for the meeting.

(4) Any matter, including amendment of this program, may be proposed and voted upon by mail, provided the procedure is unanimously authorized by the members of the committee present and voting at any meeting of the committee. If approved by the committee, notice of any proposal is mailed to the insurers not less than (~~(twenty)~~) 20 days prior to the final date fixed by the committee for voting.

(5) At any regular or special meeting at which the vote of the insurers is or may be required on any proposal, including amendment to this program, or any vote of the insurers which may be taken by mail on any proposal, such votes (~~(shall)~~) must be cast and counted on a weighted basis in accordance with each insurer's premiums written. A proposal becomes effective when approved by at least two-thirds of the votes cast on the weighted basis, except amendments to this program that will require administrative action by the commissioner.

**WSR 21-21-101**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2021-22—Filed October 19, 2021, 5:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-091.

Title of Rule and Other Identifying Information: Audited financial statements.

Hearing Location(s): On November 29, 2021, at 1 p.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of the insurance commission (OIC) website <https://www.insurance.wa.gov/actuarial-designations-r-202111>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: December 1, 2021.

Submit Written Comments to: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by November 29, 2021.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [MelanieW@oic.wa.gov](mailto:MelanieW@oic.wa.gov), by November 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, WAC 284-38-200 phrasing provides a timeline only to filers of consolidated audited statements, it does not mention those that are filing as a single entity. This was not the intent as originally drafted, therefore OIC needs to amend WAC 284-38-200 to provide a uniform timeline for submission of audited financial statements by entities authorized to issue charitable gift.

Reasons Supporting Proposal: Charitable gift annuity certificate of exemption holders are required to submit annual reports to OIC. One component of those reports is an audited financial statement. Depending on the makeup of the organization, some of the audited reports are consolidated, combin-

ing multiple companies into one financial statement, while others are specific to only one entity.

Statutory Authority for Adoption: RCW 48.02.060, 48.38.010(10).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7170; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

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

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. Legal obligations: The Washington Administrative Procedure Act (APA)<sup>1</sup> requires that "significant legislative rules" be evaluated to determine if the probable benefits of a proposed rule making exceed its probable costs. Considering both quantitative and qualitative information and analysis<sup>2</sup>. A draft of this determination must be available at the time the filing for the rule's preproposal or CR-102. The final version of this document must be completed prior to final rule adoption and included in the rule-making file.

<sup>1</sup> Chapter 34.05 RCW.

<sup>2</sup> RCW 34.05.328 (1)(c).

Determination of exemption: OIC has determined that under RCW 34.05.328 (5)(b)(iv), this rule making will only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect and is exempt from RCW 34.05.328 (1)(c).

Determination: OIC determines that this rule (is/is not) [is] exempt from cost-benefit analysis requirements.

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

Is exempt under RCW 34.05.310 (4)(d).

Explanation of exemptions: Legal obligations: Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more-than-minor costs on businesses in an industry<sup>3</sup>..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... To determine whether the proposed rule will have a disproportionate cost impact on small businesses<sup>4</sup>".

<sup>3</sup> RCW 19.85.030 <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

<sup>4</sup> RCW 19.85.040 <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act

under RCW 19.85.025(3) - provides exclusions under RCW 34.05.310 (4)(d), it corrects/clarifies existing language.

Determination: OIC determines that this rule is exempt from SBEIS requirements.

October 19, 2021

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 14-05-017, filed 2/10/14, effective 3/15/14)

**WAC 284-38-200 Annual reporting requirements.**

(1) Every certificate holder must electronically file with the commissioner a completed annual report within ~~((sixty))~~ 60 days of its fiscal year end. A copy of the annual report form and instructions for completing and filing the annual report are available on the commissioner's website at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(2) As an ongoing statement of financial condition, required under RCW 48.38.010(10), the certificate holder must annually electronically file the following financial reports:

(a)(i) An audited financial statement specific to the certificate holder prepared in accordance with generally accepted accounting principles for the fiscal year immediately preceding; or

(ii) A consolidated audited financial statement prepared in accordance with generally accepted accounting principles for the fiscal year immediately preceding, which includes a supplemental schedule specific to the certificate holder. ~~((The audited financial statement must be filed within fifteen days of its release date following the certificate holder's fiscal year end.))~~

(b) Unless permanently exempt in accordance with Internal Revenue Service regulations, file a complete public inspection copy of the certificate holder's IRS Form 990 within fifteen days of its filing with the IRS.

(c) Any other financial information required by the commissioner.

(3) The audited financial statement must be filed within 15 days of the release date following the certificate holder's fiscal year end.

(4) The failure by a certificate holder to file an audited financial statement within nine months following its most recent fiscal year end, and when applicable its IRS Form 990 within ~~((fifteen))~~ 15 days of its filing with the IRS, will constitute a finding as referenced under RCW 48.38.050 that the certificate holder failed to provide a satisfactory statement of financial condition as required under RCW 48.38.010(10). The finding may subject the certificate holder to disciplinary action as allowed under RCW 48.38.050.

~~((4))~~ (5) An encrypted or password protected filing or transmission is not considered filed under RCW 48.38.010 (10) and this section.

~~((5))~~ (6) For purposes of determining whether a filing deadline has been met, a document is considered received if electronically submitted on or before the date it is due.

**WSR 21-21-102  
PROPOSED RULES  
OFFICE OF THE  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2021-20—Filed October 19, 2021,  
5:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-097.

Title of Rule and Other Identifying Information: Out of state title records storage.

Hearing Location(s): On November 29, 2021, at 10:00 a.m. Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website <https://www.insurance.wa.gov/actuarial-designations-r-202111>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: December 1, 2021.

Submit Written Comments to: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by November 29, 2021.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [MelanieW@oic.wa.gov](mailto:MelanieW@oic.wa.gov), by November 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current state law on out-of-state title records storage requires title insurance companies and agents, who are conducting business of an escrow agent, to keep adequate records of all transactions, and these records must be maintained in Washington, unless otherwise approved by the commissioner (RCW 48.29.190 (1)(a)).

Rule making is required to outline the process for title insurance companies and agents to request approval under RCW 48.29.190 (1)(a) and detail the requirements for title insurance companies and agents to store title records outside of Washington.

Reasons Supporting Proposal: Rule making is required to outline the process for title insurance companies and agents to request approval under RCW 48.29.190 (1)(a) and detail the requirements for title insurance companies and agents to store title records outside of Washington.

Statutory Authority for Adoption: RCW 48.02.060 (3) (a), 48.29.005, and 48.29.190 (1)(a).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7170; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

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. Legal obligations: The Washington Administrative Procedure Act (APA)<sup>1</sup> requires that "significant legislative rules" be evaluated to determine if the probable benefits of a proposed rule making exceed its probable costs. Taking into account both quantitative and qualitative information and analysis<sup>2</sup>. A draft of this determination must be available at the time the filing for the rule's preproposal or CR-102. The final version of this document must be completed prior to final rule adoption and included in the rule-making file.

<sup>1</sup> Chapter 34.05 RCW.

<sup>2</sup> RCW 34.05.328 (1)(c).

Determination of exemption: OIC has determined that under RCW 34.05.328 (5)(b)(iv), this rule making will only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect and is exempt from RCW 34.05.328 (1)(c).

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 are no costs associated with the proposed rule to small business. OIC has applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3).

Below are calculations for minor cost thresholds across stakeholders that classify as a small business based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the title insurance companies.

2019 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	Average number of employees/business	Minor Cost Estimate - 0.3% of Avg Annual Gross Business Income
524127	\$100	Direct Title Insurance Carriers	44	\$21,078.90

*Source: Washington State Auditor Minor Cost Threshold Calculator July 2019.xlsx.*

Further, OIC has determined that implementation of the proposed rule will not result in significant administrative, intrinsic, or actual costs to small title insurance offices as they at present have pre-existing record storage requirements. This rule essentially allows them to store their records in a cloud storage out-of-state and outlines the process to do so.

In contrast, OIC had determined that the proposed rule will offer increased benefit to the title insurance carriers as

this rule gives them the potential to securely store records in the cloud out of the state.

For these reasons, the proposed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

October 19, 2021

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 09-20-070, filed 10/5/09, effective 11/5/09)

**WAC 284-29-160 Recordkeeping.** (1) A title insurance agent must keep and maintain complete and accurate records of the names and business addresses of those persons who have had a financial interest in the title insurance agent who are reasonably known or reasonably believed by the title insurance agent to be producers.

(2) A title insurance agent must keep and maintain records of its title orders sufficient to identify the source of the title orders.

(3) The records required by WAC 284-29-100 through 284-29-160 must be kept by the title insurance agent for a period of three years after the end of the year being reported upon.

(4) All records of a title insurance agent kept pursuant to WAC 284-29-100 through 284-29-160 must be available to the commissioner or the commissioner's representative during regular business hours.

(5) Title insurance companies and agents shall store these records in this state, unless otherwise approved by the commissioner in accordance with RCW 48.29.190.

(a) Title insurance companies and agents must request approval from the commissioner prior to storing their records outside of the state. Requests shall be emailed to prod-comp@oic.wa.gov.

(b) The commissioner will review and consider approval of the out-of-state title records storage if the records are readily accessible, securely stored, and maintained by the required statutory terms.

(c) If the title insurance company or agent plans to change the approved location of the out-of-state record storage, notification to the commissioner is required and reapproval must be granted prior to the change.

(d) Out-of-state record storage must comply with the security and data breach reporting requirements in WAC 284-04-625.

## WSR 21-21-106

### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed October 19, 2021, 9:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-108.

Title of Rule and Other Identifying Information: WAC 246-322-025, private psychiatric hospitals - responsibilities and rights - licensee and department. The department of health (department) is proposing a severity matrix for civil fines related to private psychiatric hospital enforcement in order to implement SHB 2426 (chapter 115, Laws of 2020).

Hearing Location(s): On November 30, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A vir-

tual public hearing, without physical meeting space, will be held instead.

Register in advance for this webinar <https://us02web.zoom.us/join/91012021000>

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 7, 2021.

Submit Written Comments to: Dan Overton, P.O. Box 47843, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2321, by November 30, 2021.

Assistance for Persons with Disabilities: Contact Dan Overton, phone 360-236-2953, TTY 711, email [dan.overton@doh.wa.gov](mailto:dan.overton@doh.wa.gov), by November 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 246-322-025 to establish a severity matrix for civil fines for private psychiatric hospitals. SHB 2426 allows the department, under RCW 43.70.095, to assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of one million dollars, on a licensed hospital when the department determines the psychiatric hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the psychiatric hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department. The proposed rules establish when and how fines will be assessed in relation to the severity and frequency of the violation of noncompliance.

Reasons Supporting Proposal: The legislature found that current regulatory oversight of private psychiatric hospitals licensed under chapter 71.12 RCW needed to be enhanced to protect the health, safety, and well-being of patients seeking behavioral health care in these facilities. SHB 2426 was passed, which requires the department to adopt rules establishing specific fine amounts in relation to the severity of noncompliance by a private psychiatric hospital. The department conducted workshops and solicited input from interested parties in order to create a fair yet binding document that addresses the intent of the bill. The proposed rule sets these fine amounts and establishes a matrix of severity and process by which they will be applied.

Statutory Authority for Adoption: RCW 71.12.670, 71.12.710.

Statute Being Implemented: SHB 2426 (chapter 115, Laws of 2020); RCW 43.70.095.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dan Overton, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2953.

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 Dan Overton, P.O. Box 47843, Olympia, WA 98504, phone 360-236-2953, fax 360-236-2321, TTY 711, email dan.overton@doh.wa.gov.

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. This proposed rule only applies to licensed private psychiatric hospitals; these do not meet the definition of "small business" in RCW 19.85.020. Additionally, the proposed rule establishes fine amounts related to severity of repeated noncompliance that would only be assessed on a psychiatric hospital that repeatedly did not comply with regulations; the rule does not impose costs for compliance with regulations.

October 19, 2021  
Kristin Peterson, JD  
Deputy Secretary  
Policy and Planning  
for Umair A. Shah, MD, MPH  
Secretary

**AMENDATORY SECTION** (Amending WSR 95-22-012, filed 10/20/95, effective 11/20/95)

**WAC 246-322-025 Responsibilities and rights—Licensee and department.** (1) The licensee shall:

- (a) Comply with the provisions of chapter 71.12 RCW and this chapter;
  - (b) Post the private psychiatric hospital license in a conspicuous place on the premises;
  - (c) Maintain the bed capacity at or below the licensed bed capacity;
  - (d) Cooperate with the department during on-site surveys and investigations;
  - (e) Respond to a statement of deficiencies by submitting to the department, according to the dates specified on the statement of deficiencies form:
    - (i) A written plan of correction for each deficiency stated in the report and date to be completed; and
    - (ii) A progress report stating the dates deficiencies were corrected.
  - (f) Obtain department approval before changing the bed capacity;
  - (g) Obtain department approval before starting any construction or making changes in department-approved plans or specifications;
  - (h) Notify the department immediately upon a change of administrator or governing body;
  - (i) When assuming ownership of an existing hospital, maintain past and current clinical records, registers, indexes, and analyses of hospital services, according to state law and regulations; and
  - (j) Obtain department approval of a plan for storing and retrieving patient records and reports prior to ceasing operation as a hospital.
- (2) An applicant or licensee may contest a disciplinary decision or action of the department according to the provi-

sions of RCW 43.70.115, chapter 34.05 RCW and chapter 246-10 WAC.

(3) The department shall:

- (a) Issue or renew a license when the applicant or licensee meets the requirements in chapter 71.12 RCW and this chapter;
  - (b) Conduct an on-site inspection of the hospital prior to granting an initial license;
  - (c) Conduct on-site inspections at any time to determine compliance with chapter 71.12 RCW and this chapter;
  - (d) Give the administrator a written statement of deficiencies of chapter 71.12 RCW and this chapter observed during on-site surveys and investigations; and
  - (e) Comply with RCW 43.70.115, chapter 34.05 RCW and chapter 246-10 WAC when denying, suspending, modifying, or revoking a hospital license.
- (4) The department may deny, suspend, or revoke a private psychiatric hospital license if the department finds the applicant, licensee, its agents, officers, directors, or any person with any interest therein:
- (a) Is unqualified or unable to operate or direct operation of the hospital according to chapter 71.12 RCW and this chapter;
  - (b) Makes a misrepresentation of, false statement of, or fails to disclose a material fact, to the department:
    - (i) In an application for licensure or renewal of licensure;
    - (ii) In any matter under department investigation; or
    - (iii) During an on-site survey or inspection;
  - (c) Obtains or attempts to obtain a license by fraudulent means or misrepresentation;
  - (d) Fails or refuses to comply with the requirements of chapter 71.12 RCW or this chapter;
  - (e) Compromises the health or safety of a patient;
  - (f) Has a record of a criminal or civil conviction for:
    - (i) Operating a health care or mental health care facility without a license;
    - (ii) Any crime involving physical harm to another individual; or
    - (iii) Any crime or disciplinary board final decision specified in RCW 43.43.830;
  - (g) Had a license to operate a health care or mental health care facility denied, suspended or revoked;
  - (h) Refuses to allow the department access to facilities or records, or fails to promptly produce for inspection any book, record, document or item requested by the department, or interferes with an on-site survey or investigation;
  - (i) Commits, permits, aids or abets the commission of an illegal act on the hospital premises;
  - (j) Demonstrates cruelty, abuse, negligence, assault or indifference to the welfare and well-being of a patient;
  - (k) Fails to take immediate appropriate corrective action in any instance of cruelty, assault, abuse, neglect, or indifference to the welfare of a patient;
  - (l) Misappropriates the property of a patient;
  - (m) Fails to exercise fiscal accountability and responsibility toward individual patients, the department, or the business community; or
  - (n) Retaliates against a staff person, patient or other individual for reporting suspected abuse or other alleged improprieties.

(5) The department may summarily suspend a license pending proceeding for revocation or other action if the department determines a deficiency is an imminent threat to a patient's health, safety or welfare.

(6) The department may assess civil fines on a psychiatric hospital according to RCW 71.12.710.

(a) The department may assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a psychiatric hospital when:

(i) The psychiatric hospital has previously been subject to an enforcement action for the same or similar type of violation of the same or similar statute or rule; or

(ii) The psychiatric hospital has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule; or

(iii) The psychiatric hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

(b) The department will assess a civil fine in accordance with Table 1 of this section:

**Table 1**

<b>Fine Amounts in Relation to the Severity of the Violation</b>			
<b>Scope</b>	<b>Impact of Potential or Actual Harm</b>		
	<b>Low</b>	<b>Moderate</b>	<b>High</b>
<b>Limited</b>	Up to \$1,000	\$1,000 - \$4,000	\$2,000 - \$10,000
<b>Pattern</b>	Up to \$2,000	\$2,000 - \$5,500	\$3,500 - \$10,000
<b>Widespread</b>	Up to \$3,000	\$3,000 - \$7,000	\$6,500 - \$10,000

(c) The "severity of the violation" will be considered when determining fines. Levels of severity are categorized as low, moderate, or high, and defined as:

(i) "**Low**" means harm could happen but would be rare. The violation undermines safety or quality or contributes to an unsafe environment but is very unlikely to directly contribute to harm;

(ii) "**Moderate**" means harm could happen occasionally. The violation could cause harm directly, but is more likely to cause harm as a continuing factor in the presence of special circumstances or additional failures. If the deficient practice continues, it would be possible that harm could occur but only in certain situations or patients;

(iii) "**High**" means harm could happen at any time or did happen. The violation could directly lead to harm without the need for other significant circumstances or failures. If the deficient practice continues, it would be likely that harm could happen at any time to any patient.

(d) Factors the department will consider when determining the severity of the violation include, but are not limited to:

(i) Whether harm to the patient has occurred, or could occur including, but not limited to, a violation of patient's rights;

(ii) The impact of the actual or potential harm on the patient;

(iii) The degree to which the hospital failed to meet the patient's highest practicable physical, mental, and psychosocial well-being;

(iv) Whether a fine at a lower severity has been levied and the condition or deficiency related to the violation has not been adequately resolved; and

(v) Whether the hospital has been offered, or requested, and received and implemented technical assistance from the department.

(e) The scope of the violation is the frequency, incidence or extent of the occurrence of the violation(s). The levels of scope are defined as follows:

(i) "**Limited**" means a unique occurrence of the deficient practice that is not representative of routine or regular practice and has the potential to impact only one or a very limited number of patients, visitors, staff. It is an outlier. The scope of the violation is limited when one or a very limited number of patients are affected or one or a very limited number of staff are involved, or the deficient practice occurs in a very limited number of locations.

(ii) "**Pattern**" means multiple occurrences of the deficient practice, or a single occurrence that has the potential to impact more than a limited number of patients, visitors, staff. It is a process variation. The scope of the violation becomes a pattern when more than a very limited number of patients are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same patient(s) have been affected by repeated occurrences of the same deficient practice.

(iii) "**Widespread**" means the deficient practice is pervasive in the facility or represents a systemic failure or has the potential to impact most or all patients, visitors, staff. It is a process failure. Widespread scope refers to the entire organization, not just a subset of patients or one unit.

(f) A hospital may appeal the department's action of assessing civil fines under RCW 43.70.095.

**WSR 21-21-108**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed October 20, 2021, 7:59 a.m.]

Continuance of WSR 21-20-113.  
 Proposal is exempt under RCW 34.05.310(4) or 34.05-330(1).

Hearing Location(s): On November 23, 2021, at 9:30 a.m., at the Office of Financial Management, audio confer-

ence only, Dial-in (888) 285-8919, Enter pin: 8101730, Code (if asked): 415.

Date of Intended Adoption: November 30, 2021.

Submit Written Comments to: Brandy Chinn, Office of Financial Management, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by November 16, 2021.

Assistance for Persons with Disabilities: Contact Office of Financial Management, TTY 711 or 1-800-833-6384, by November 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the hearing date from November 11, 2021, to November 23, 2021.

Reasons Supporting Proposal: An incorrect hearing date was listed on WSR 21-20-113. November 11, 2021, is a state holiday.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

October 20, 2021  
Roselyn Marcus  
Assistant Director  
of Legal and  
Legislative Affairs

**WSR 21-21-109**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed October 20, 2021, 8:02 a.m.]

Continuance of WSR 21-20-114.

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

Hearing Location(s): On November 23, 2021, at 9:30 a.m., at the Office of Financial Management, audio conference only, Dial-in (888) 285-8919, Enter pin: 8101730, Code (if asked): 415.

Date of Intended Adoption: November 30, 2021.

Submit Written Comments to: Brandy Chinn, Office of Financial Management, P.O. Box 47500, Olympia, WA

98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by November 16, 2021.

Assistance for Persons with Disabilities: Contact Office of Financial Management, TTY 711 or 1-800-833-6384, by November 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the hearing date from November 11, 2021, to November 23, 2021.

Reasons Supporting Proposal: An incorrect hearing date was listed on WSR 21-20-114. November 11, 2021, is a state holiday.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

October 20, 2021  
Roselyn Marcus  
Assistant Director  
of Legal and Legislative Affairs

**WSR 21-21-110**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed October 20, 2021, 8:06 a.m.]

Continuance of WSR 21-20-115.

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

Hearing Location(s): On November 23, 2021, at 9:30 a.m., at the Office of Financial Management, audio conference only, Dial-in (888) 285-8919, Enter pin: 8101730, Code (if asked): 415.

Date of Intended Adoption: November 30, 2021.

Submit Written Comments to: Brandy Chinn, Office of Financial Management, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by November 16, 2021.

Assistance for Persons with Disabilities: Contact office of financial management, TTY 711 or 1-800-833-6384, by November 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the hearing date from November 11, 2021, to November 23, 2021.

Reasons Supporting Proposal: An incorrect hearing date was listed on WSR 21-20-115. November 11, 2021, is a state holiday.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

October 20, 2021  
Roselyn Marcus  
Assistant Director  
of Legal and Legislative Affairs

**WSR 21-21-112**  
**PROPOSED RULES**  
**OLYMPIC REGION**  
**CLEAN AIR AGENCY**  
[Filed October 20, 2021, 9:33 a.m.]

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-23 issue of the Register.

**WSR 21-21-114**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**  
[Filed October 20, 2021, 11:16 a.m.]

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-23 issue of the Register.