

WSR 24-17-002

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed August 8, 2024, 8:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-051.

Title of Rule and Other Identifying Information: Prescription transfers. The pharmacy quality assurance commission (commission) is proposing to amend WAC 246-945-345 and add new WAC 246-945-346 in chapter 246-945 WAC to establish the expectations of pharmacies related to noncontrolled and controlled substance prescription transfers upon patient request.

Hearing Location(s): On October 10, 2024, at 1:30 p.m., at the Department of Labor and Industries, Room S117/118, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtually via Zoom https://us02web.zoom.us/webinar/tZwvcu-orjooGdL0uce3WWkJLsRorLzko_bx/ics?icsToken=98tyKuGgrD4sGtSUshqBRpw-AI_4M_TziH5BjadxzArmJnNkVQjcGvFwPaBTCTPf. To access the meeting on August 22, 2024, at 9:00 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/87143495001> and use the Webinar ID 871 4349 5001. The access options include One-tap mobile: US +12532158782,,86114958466# or +16699009128,,86114958466#; or by telephone: Dial (for higher quality, dial a number based on your current location): US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available at <https://us02web.zoom.us/u/kdLNo6unOZ>.

Date of Intended Adoption: October 10, 2024.

Submit Written Comments to: Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, beginning date and time of this filing, by September 25, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Julia Katz, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by October 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the amended WAC 246-945-345 is to make the fulfillment of patient-requested noncontrolled prescription transfers enforceable by the commission and occur within a set time frame. Revising "may" to "shall" in WAC 246-945-345(1) will make prescription transfers upon patient request enforceable. Additionally, the time parameter added to WAC 246-945-345(2) will encourage prescription transfers to be conducted in a timely manner. The anticipated effect of the commission's rule is to increase the timeliness of patient access to medication therapy.

The proposed new WAC 246-945-346 applies the same enforceability and time parameters to patient-requested *controlled substance* prescription transfers. Its anticipated effect is also to increase the timeliness of patient access to medication therapy.

Reasons Supporting Proposal: The commission received feedback from interested parties about challenges obtaining requested prescription transfers permitted by WAC 246-945-345(2) in a timely manner and voted to address the concerns at the March 2, 2023, business meeting. The commission could not hold facilities accountable for the expressed

challenges due to the permissive language in WAC 246-945-345. The proposed language will compel compliance among facilities, reducing the challenges faced by some patients requesting a prescription transfer.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.075, and 69.50.301.

Statute Being Implemented: RCW 18.64.005, 69.41.075, and 69.50.301.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Julia Katz, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058; and Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058.

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 Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, email PharmacyRules@doh.wa.gov.

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

Is not exempt.

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

Small Business Economic Impact Statement (SBEIS)

SECTION 1: A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule: The commission is proposing this rule to regulate the fulfillment of patient-requested prescription transfers in a timely manner. Currently, WAC 246-945-345(2) states that upon patient request, prescriptions "may be transferred." The term "may" makes the provision difficult to enforce. The proposed rule aims to protect and promote public health and safety by ensuring patients' prescriptions are transferred upon request.

The proposed rule stems from feedback the commission received from interested parties about challenges obtaining requested prescription transfers permitted by WAC 246-945-345(2). On March 2, 2023, the commission voted to address the expressed concerns. The commission filed a CR-101 as WSR 23-23-051 on November 7, 2023. On May 2, 2024, the commission voted to approve the filing of the CR-102.

The proposed rules are needed to ensure patient-requested prescription transfers are transferred by pharmacies. Amending WAC 246-945-345(2) to state that prescriptions "shall be transferred" and applying the same language to the new section makes the provision enforceable. The addition of time frames to both chapter 246-945 WAC sections provides a guidance to determine compliance with the rules.

Pharmacies must transfer prescriptions, upon patient request, and must do so within three business days or a time frame that does not adversely impact the provision of medication therapy, whichever comes first.

SECTION 2: Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

SBEIS Table 1. Summary of Businesses Required to Comply to the Proposed Rule:

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
456110	Pharmacies and Drug Stores	267*	\$19,161.74

*The employment security department (ESD) reported 267 businesses categorized as pharmacies and drug stores, but department of health staff reported the number of pharmacies as of April 2024, with 1,283 facilities being standalone pharmacies and 110 facilities being hospital pharmacies.

SECTION 3: Analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue:

WAC 246-945-345 Noncontrolled prescription transfers: Description: Currently, pharmacies are not required to fulfill noncontrolled prescription transfers requested by patients and while most do, approximately 15 percent of prescription transfers requested by patients are believed to be unfulfilled. The commission is proposing to amend WAC 246-945-345 to require pharmacies to transfer all noncontrolled prescriptions upon patient request and to do so within three business days of receiving the request or a time frame that does not adversely impact the provision of medication therapy, whichever comes first.

Pharmacy managers will need to apprise pertinent staff of the rule adoption. The content may be supplemental to an existing communication.

The commission assumes that all pharmacies dispensing noncontrolled prescriptions have a fax machine, but should they have to purchase one the cost could be \$200 to \$1,000.¹

Pharmacies will need to fulfill all patient-requested noncontrolled prescription transfers within three business days of receiving the request or a time frame that does not adversely impact medication therapy.

Cost(s): Pharmacies will need to communicate with staff the requirement that they must transfer noncontrolled prescriptions upon request and that the transfer must happen within three days of receiving the request, or in a time frame that does not adversely impact the medication therapy. The following cost estimate applies to communications for both WAC 246-945-345 and WAC 246-945-346.

Estimate: The estimated average probable cost is \$150.51 per pharmacy to communicate with its employees these new requirements.

Cost assumptions for estimate:

- In 2024, there are 1,393 active pharmacies and in 2023, there were 5,106 licensed pharmacies and other pharmaceutical firms meaning pharmacies and hospital pharmacies compose 27 percent of pharmaceutical firms in Washington.^{2,3}
- The average pharmacy in Washington employs eight pharmacy staff total - one pharmacy manager, three pharmacists, two pharmacy technicians, and two pharmacy assistants.⁴ Therefore, licensed pharmaceutical professions among pharmacies and hospital pharma-

cies in 2023 included 3,044 pharmacists, 2,703 pharmacy assistants, and 2,507 pharmacy technicians.⁵

- Commission staff estimate based on consultation with a pharmacist that the communication will require one hour of the pharmacy manager's time (\$73.50/hour) to prepare and deliver the content.⁶
- Commission staff estimate based on consultation with a pharmacist that the communication will require 15 minutes of time from pharmacists (\$71.42/hour), pharmacy technicians (\$26.63/hour), and pharmacy assistants (\$20.29/hour) to review the communication.^{7,8,9}

Calculations for estimate:

- One hour of a pharmacy manager's time (\$73.50/hour) = \$73.50.
- Fifteen minutes of one pharmacist's (\$71.42/hour) time = $\$71.42/4 = \17.85 .
- Fifteen minutes of one pharmacy technician's (\$26.63/hour) time = $\$26.63/4 = \6.66 .
- Fifteen minutes of one pharmacy assistant's (\$20.29/hour) time = $\$20.29/4 = \5.07 .
- One hour of the pharmacy manager's time plus 15 minutes of time from three pharmacists, two pharmacy technicians, and two pharmacy assistants = $\$73.50 + (17.85 \times 3) + (6.66 \times 2) + (5.07 \times 2) = \150.51 .

Estimate: \$0 to \$1,303.05 total estimated average probable annual cost per pharmacy to transfer currently unfulfilled noncontrolled prescription transfers requested by patients.

Cost assumptions for estimate:

- An average pharmacy in Washington employs eight pharmacy staff, three of whom are pharmacists.¹⁰
- Commission staff estimate based on consultation with a pharmacist that pharmacies are fulfilling 85 percent of patient-requested noncontrolled prescription transfers. There may be pharmacies dispensing noncontrolled prescriptions that receive zero prescription transfers requested by patients annually.
- Commission staff estimate based on consultation with a pharmacist that each noncontrolled prescription transfer will require three to 10 minutes of a pharmacist's time (\$71.42/hour) and that each pharmacy dispensing noncontrolled substances transfers two patient requests per workday or 730 transfers annually.^{11,12} Therefore, it is estimated that an average pharmacy in Washington dispensing noncontrolled prescriptions spends 36.5 to 121.7 hours of pharmacist time annually fulfilling patient-requested noncontrolled prescription transfers which is \$2,606.83 to \$8,691.81 in pharmacist time.¹³

Calculations for estimate:

- One hundred percent requested prescription transfers - 85 percent fulfilled prescription transfers = 15 percent of prescription transfers go unfulfilled.
- Fifteen percent unfulfilled prescription transfers x estimated 730 annual transfers = 109.5 unfulfilled noncontrolled prescription transfers.
- Three to 10 minutes of a pharmacist's (\$71.42/hour) time per prescription transfer = \$3.57 (three minutes) to \$11.90 (10 minutes)

cost of a pharmacists' time per noncontrolled prescription transfer.

- \$3.57 to \$11.90 cost of a pharmacists' time per noncontrolled prescription transfer x 0 to 109.5 estimated annual unfulfilled noncontrolled prescription transfers = \$0 to \$1,303.05 for pharmacist time to fulfill estimated unfulfilled prescription transfers.

Estimate: The commission estimates a negligible annual cost to pharmacies for fulfilling patient-requested noncontrolled prescription transfers within three business days of receiving the request or a time frame that does not adversely impact medication therapy.

Cost assumptions for estimate:

- No additional staff time nor equipment were identified as necessary to comply with the time frame of the proposed rule. However the commission acknowledges that there may be unforeseen negligible administrative costs in this space.

WAC 246-945-346 Controlled substance prescription transfers: Description: Pharmacies are not currently required to fulfill controlled prescription transfers requested by patients and while most do, approximately 15 percent of prescription transfers requested by patients are believed to be unfulfilled. The commission is proposing to add WAC 246-945-346 to require pharmacies to transfer all controlled substance prescriptions upon patient request and to do so within three business days of receiving the request or a time frame that does not adversely impact the provision of medication therapy, whichever comes first.

Pharmacy managers will need to apprise pertinent staff of the rule adoption. The content may be supplemental to an existing communication. See cost estimate above.

The commission assumes all pharmacies transferring controlled prescriptions have electronic medical record systems in accordance with 21 C.F.R. § 1306.08 and 21 C.F.R. § 1306.25.

Pharmacies will need to fulfill all patient-requested controlled prescription transfers within three business days of receiving the request or a time frame that does not adversely impact medication therapy.

Cost(s): Pharmacies will need to fulfill all controlled prescription transfers requested by patients.

Estimate: \$0 to \$11,141.52 total estimated average probable annual cost per pharmacy to transfer currently unfulfilled patient-requested controlled prescriptions in accordance with 21 C.F.R. § 1306.08 and 21 C.F.R. § 1306.25. Controlled prescription transfers must be communicated via electronic medical record system by licensed pharmacists.¹⁴

Cost assumptions for estimate:

- Assumes an average pharmacy in Washington employs eight pharmacy staff, three of whom are pharmacists based on a calculation vetted by a pharmacist of active pharmacy facility licenses and active pharmacy profession licenses.¹⁵
- Assumes all pharmacies transferring controlled prescriptions have electronic medical record systems in accordance with 21 C.F.R. §§ 1306.08 and 1306.25.
- Commission staff estimate based on consultation with a pharmacist that pharmacies are fulfilling 85 percent of patient-requested controlled prescription transfers.

- There may be pharmacies dispensing controlled prescriptions that receive zero prescription transfers requested by patients annually.
- Commission staff also estimate based on consultation with a pharmacist that each controlled prescription transfer will require five to 10 minutes of a pharmacists' time (\$71.42/hour) and that each pharmacy dispensing controlled substances transfers three patient-requested controlled prescription transfers an hour or 6,240 transfers annually.^{16,17} Therefore, it is estimated that an average pharmacy in Washington dispensing controlled prescriptions spends 520 to 1,040 hours of pharmacist time fulfilling patient-requested controlled prescription transfers which is \$37,138.40 to \$74,276.80 in pharmacist time annually.

Calculations for estimate:

- One hundred percent requested prescription transfers - 85 percent fulfilled prescription transfers = 15 percent of uncontrolled prescription transfers go unfulfilled.
- Fifteen percent unfulfilled prescription transfers x 6,240 estimated annual transfers = 936 unfulfilled controlled prescription transfers.
- Five to ten minutes of a pharmacists' time per prescription transfer x \$71.42 pharmacist hourly wage = \$5.95 (five minutes) to \$11.90 (10 minutes) cost of a pharmacists' time per controlled prescription transfer.
- \$5.95 to \$11.90 cost of a pharmacists' time per prescription transfer x 0 - 936 estimated annual unfulfilled controlled prescription transfers = \$0 to \$11,141.52 for pharmacist time to fulfill estimated unfulfilled controlled prescription transfers.

Estimate: The commission estimates a negligible annual cost to pharmacies for fulfilling patient-requested controlled prescription transfers within three business days of receiving the request or a time frame that does not adversely impact medication therapy.

Cost assumptions for estimate: No additional staff time nor equipment are necessary to comply with the time frame of the proposed rule. However, the commission acknowledges that there may be unforeseen negligible administrative costs in this space.

Summary of all Cost(s):

SBEIS Table 2. Summary of Section 3 Probable Cost(s):

WAC Section	Description of Cost	Probable Estimated Cost(s)
WAC 246-945-345 and 246-945-346	Employee notification	\$151 (one-time)
WAC 246-945-345	Employee time	\$0-\$1,303.05 (annually)
WAC 246-945-346	Employee time	\$0-\$11,141.52 (annually)
Total First Year Costs (Range) ^{18,19}		\$151-\$12,595.57

SECTION 4: Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated: While the commission has no reason to believe that the cost for business to comply with the proposed rule would exceed the minor cost threshold at the maximum probable cost, the commission was only able to calculate a scenario that produced the average cost of compliance per business. Because the estimate did not include a potential maximum cost of compliance per businesses, the commission decided it was most protective to determine that:

Yes, the costs of the proposed rule could be more than the minor cost threshold (\$19,161.74).

Summary of how the costs were calculated: The average probable costs were calculated for pharmacies to comply with the proposed rule under what the commission believes to be a likely scenario for an average pharmacy to comply with the proposed rule. Probable costs affiliated with compliance primarily pertain to staff time and equipment. Average staff wages in Washington state were sourced from data produced by the United States Bureau of Labor and Statistics. Additional resources were used to estimate employee quantities and equipment costs. Commission staff, including a pharmacist consultant, determined the estimated time and equipment requirements.

SECTION 5: Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: No, the commission believes the proposed rule does not have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

The commission believes that there is not a disproportionate impact because costs to comply with the rule are based on number of staff and volume of businesses. The commission anticipates that all businesses will have a scaled impact because the cost will vary depending on size of the business (number of employees) and volume of service.

- 1 Staples, Fax Machines, https://www.staples.com/fax+machine/directory_fax%2520machine?autocompletesearchkey=fax%2520machine&algo=y (visited May 7, 2024).
- 2 L. Faelund (personal communication, April 3, 2024).
- 3 Washington State Department of Health, Licensee Counts by Year: Professions, <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdoh.wa.gov%2Fsites%2Fdefault%2Ffiles%2F2023-09%2F631106-LicenseeCountsbyProfession.xlsx&wdOrigin=BROWSELINK> (visited May 14, 2024).
- 4 3,044 (pharmacists)/1,393 = 2.2 = 3 average pharmacists per pharmacy; 2,507 (technicians)/1,393 = 1.8 = 2 average assistants per pharmacy; 2,703 (assistants)/1,393 = 1.9 = 2 average technicians per pharmacy; 3+2+2+1 (manager) = 8 employees
- 5 See source #2
- 6 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Health Service Managers, <https://www.bls.gov/oes/current/oes119111.htm> (visited May 6, 2024).
- 7 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Pharmacists, <https://www.bls.gov/oes/current/oes291051.htm> (visited May 7, 2024).
- 8 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Pharmacy Technicians, <https://www.bls.gov/oes/current/oes291051.htm> (visited May 7, 2024).
- 9 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Pharmacy Aides, <https://www.bls.gov/oes/current/oes319095.htm> (visited May 7, 2024).
- 10 3,044 (pharmacists)/1,393 = 2.2 = 3 average pharmacists per pharmacy; 2,507 (technicians)/1,393 = 1.8 = 2 average assistants per pharmacy; 2,703 (assistants)/1,393 = 1.9 = 2 average technicians per pharmacy; 3+2+2+1 (manager) = 8 employees
- 11 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Pharmacists, <https://www.bls.gov/oes/current/oes291051.htm> (visited May 7, 2024).
- 12 2 (average number of patients requesting transfers per day) x 365 work days per year = 730 average patient transfers per year
- 13 730 (average patient transfers annually) x 3 (minutes per transfer) = 2190 minutes annually for transfers; 2190/60 (minutes per hour) = 36.5 hours annually for transfers; \$71.42 (pharmacist average wage) x 36.5 (hours annually for transfers) = \$2,606.83 for annual pharmacist time transferring patient-requested noncontrolled prescriptions
- 14 § 1306.25 - Transfer between pharmacies of prescription information for Schedules III, IV, and V controlled substances for refill purposes, <https://www.govregs.com/regulations/21/1306.25> (visited on May 23, 2024).
- 15 3,044 (pharmacists)/1,393 = 2.2 = 3 average pharmacists per pharmacy; 2,507 (technicians)/1,393 = 1.8 = 2 average assistants per pharmacy; 2,703 (assistants)/1,393 = 1.9 = 2 average technicians per pharmacy; 3+2+2+1 (manager) = 8 employees
- 16 Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, Pharmacists, <https://www.bls.gov/oes/current/oes291051.htm> (visited May 7, 2024).
- 17 3 (average prescription transfer requests an hour) x 40 hour work week = 120 average prescription transfers per week; 120x 52 (weeks/per) = 6,240 prescription transfers per pharmacy per year
- 18 The total reflects a pharmacy that dispenses both controlled and noncontrolled prescriptions.
- 19 The low end of the range is calculated by the one-time cost (\$151) plus neither of the annual costs which is applicable to a pharmacy that does not receive prescription transfer requests from patients in the first year. The high end of the range (\$8,448.41) is calculated by adding the one-time cost with the high end costs of each annual cost which is indicative of a pharmacy that currently does not fulfill 15% of prescription transfers requested by patients, all of which take the maximum anticipated time to transfer.

A copy of the statement may be obtained by contacting Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, email PharmacyRules@doh.wa.gov.

August 7, 2024
Hawkins DeFrance, PharmD, Chair

OTS-5466.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-345 Noncontrolled prescription transfers. (1)

~~((Subsections (2) through (5) of this section apply to the transfer of prescription information for noncontrolled drugs. The transfer of controlled substance prescription information must conform to the requirements of 21 C.F.R. Sec. 1306.25.~~

~~(2)) Upon request by a patient ((request)) or an authorized representative of a patient, a noncontrolled prescription ((may)) shall be transferred within the limits of state and federal law.~~

(2) Pharmacies shall transfer noncontrolled prescription information within three business days of receiving the request or within a time frame that does not adversely impact the provision of medication therapy, whichever comes first.

(3) Sufficient information needs to be exchanged in the transfer of a noncontrolled prescription to maintain an auditable trail, and all elements of a valid prescription.

(4) Pharmacies sharing a secure real-time database are not required to transfer noncontrolled prescription information for dispensing.

(5) Noncontrolled prescriptions must be transferred by electronic means or facsimile, except in emergent situations.

NEW SECTION

WAC 246-945-346 Controlled substance prescription transfers.

(1) Upon request by a patient or an authorized representative of the patient, a controlled substance prescription shall be transferred within the limits of state and federal law including, but not limited to, the requirements of 21 C.F.R. Secs. 1306.08 and 1306.25.

(2) Pharmacies shall transfer controlled substance prescription information within three business days of receiving the request or within a time frame that does not adversely impact the provision of medication therapy, whichever comes first.

WSR 24-17-006

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed August 8, 2024, 8:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-111.

Title of Rule and Other Identifying Information: Expanding access to drugs stored outside of the pharmacy by unlicensed health care facility staff. The pharmacy quality assurance commission (commission) is proposing to amend WAC 246-945-455 which currently limits access to drugs stored outside of the pharmacy to only licensed health care professionals and may disrupt supply chain management in health care facilities.

Hearing Location(s): On October 10, 2024, at 9:30 a.m., at the Department of Labor and Industries, Room S117/118, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtually via Zoom. Register in advance for this webinar at <https://us02web.zoom.us/j/87143495001>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 10, 2024.

Submit Written Comments to: Haleigh Mauldin, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2260, beginning the date and time of this filing, by October 4, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Haleigh Mauldin, phone 360-890-0720, fax 360-236-2260, TTY 711, email PharmacyRules@doh.wa.gov, by October 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prior to the commission's rules rewrite in 2020, WAC 246-873-070(3) permitted the director of a pharmacy at a hospital to "designate in writing, by title and/or position those individuals who shall be authorized access to particular areas within the pharmacy, including authorization of access to keys and/or combinations." This provision was removed in the rules rewrite process. The current WAC 246-945-455 (1)(c) reads, "Access [to drugs stored outside of the pharmacy] must be limited to health care professionals licensed under the chapters specified in RCW 18.130.040 acting within their scope..."

Under WAC 246-945-455 (1)(c), unlicensed staff responsible for supporting supply chain management as a part of their scope of employment are not able to access certain drugs such as over-the-counter drugs or IV fluids, among others, without obtaining a health profession credential listed in RCW 18.130.040. The commission was informed of unintended disruption to the drug supply chain within institutional facilities by requiring only licensed health care professionals to access drugs stored outside of the pharmacy.

The proposed rule codifies guidance from the commission stating that unlicensed employees or contractors of a health care facility may access drugs listed in the facility's policies and procedures that are stored outside of the pharmacy in a designated area when they are acting within their scope of employment for the purposes of supply chain management. This proposal intends to reduce unintended disruption of facility supply chain management causing administrative burden on health care facilities and increase patient safety by releasing licensed staff to focus on patient care.

Reasons Supporting Proposal: As it is currently written, WAC 246-945-455 disrupts and puts strain on an already overwhelmed supply chain, unintentionally limiting access to patient care. Reducing strain on the supply chain within licensed facilities could protect patient and public health, safety, and welfare by allowing unlicensed employees or contractors to complete supply chain tasks so that licensed healthcare providers can engage in patient care. The proposed rules are needed for unlicensed staff to access drugs stored outside of the pharmacy to allow licensed staff to focus on patient care.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.075, and 69.50.301.

Statute Being Implemented: RCW 18.64.005.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Haleigh Mauldin, 111 Israel Road S.E., Tumwater, WA 98501, 360-890-0720; and Enforcement: Marlee B. O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

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 Haleigh Mauldin, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-890-0720, fax 360-236-2260, TTY 711, email PharmacyRules@doh.wa.gov.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

SECTION 1: A brief description of the proposed rule, including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule: On July 1, 2020, the commission completed a two-and-a-half-year process to consolidate and streamline all rules under its authority related to the practice of pharmacy. In this rewrite, chapter 246-945 WAC was created, which includes WAC 246-945-455 that contains rules pertaining to drugs stored outside of a pharmacy. Previously, WAC 246-873-070(3) permitted the director of pharmacy at a hospital to "designate in writing, by title and/or position those individuals who shall be authorized access to particular areas within the pharmacy, including authorization of access to keys and/or combinations." This provision was removed in the chapter rewrite process. The current WAC 246-945-455 (1)(c) reads, "Access [to drugs stored outside of the pharmacy] must be limited to health care professionals licensed under the chapters specified in RCW 18.130.040 acting within their scope."

Under WAC 246-945-455 (1)(c), unlicensed staff responsible for supporting supply chain management as a part of their scope of employment are not able to access certain drugs such as over-the-counter drugs or IV fluids, among others, without obtaining a health profession credential listed in RCW 18.130.040. The commission was informed of unintended disruption to the drug supply chain within institutional

facilities by requiring only licensed health care professionals to access drugs stored outside of the pharmacy. In response, the commission determined in a guidance document that it would not find licensees deficient or take enforcement actions against licensees for violations of WAC 246-945-455 (1)(c) if the following conditions are met:

- The unlicensed employee of a health care facility is operating within the scope of their employment;
- The unlicensed employee is only accessing drugs for the purposes of supply chain management within the health care facility;
- The unlicensed employee is only accessing drugs listed in a policy and procedure that is in a readily retrievable form;
- The unlicensed employee cannot access controlled substances under any circumstances or access drug products as part of dispensing a prescription or order; and
- The pharmacy meets all other requirements of WAC 246-945-455 and applicable laws.

The proposed rule language would codify the guidance the commission provided on access to drugs stored outside the pharmacy by unlicensed staff and review whether there are other unintended disruptions from WAC 246-945-455 (1)(c) within health care facilities. The proposed rule also incorporates feedback received from interested parties since the guidance document went into effect.

Compliance with this rule would require a health care facility choosing to allow unlicensed staff to have access to drugs stored outside of the pharmacy to develop new policies, procedures, and training that detail scopes of employment and list drugs that will be accessed. The initial development of these documents would likely be a one-time cost that would require staff time and consultation with other relevant professions.

SECTION 2: Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

Small Business Economic Impact Statement (SBEIS) Table 1. Summary of Businesses Required to Comply to the Proposed Rule:

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
446110	Pharmacies and Drug Stores	267*	\$19,161

*The employment security department (ESD) reported 267 businesses categorized as pharmacies and drug stores, but department of health staff reported the number of pharmacies as of April 2024, with 1,283 facilities being standalone pharmacies and 110 facilities being hospital pharmacies.

SECTION 3: Analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue:

WAC 246-945-455 Drugs stored outside of the pharmacy: Description: WAC 246-945-455 states that each staff member of a health care facility must obtain at least a license of a health care professional listed in RCW 18.130.040 to be able to access drugs that are stored outside of the pharmacy for supply chain management within the facility. This requirement created unintended disruptions to the drug supply chain within health care facilities because historical practices per-

mitted unlicensed employees of a health care facility to access certain drug products for supply chain management needs.

The proposed rule would provide a framework for unlicensed staff responsible for supply chain management to access drugs stored outside of the pharmacy under certain conditions. Health care facilities that choose to allow this will need to develop policies, procedures, and conduct necessary training for unlicensed employees.

Cost(s): A health care facility choosing to allow unlicensed staff to have access to drugs stored outside of the pharmacy must develop new policies and procedures detailing scopes of employment and listing drugs that will be accessed. In addition to the development of new policies and procedures, health care facilities will need to train staff on the policies and procedures.

The guidance document, *Access to Drugs Stored Outside of the Pharmacy*, states that licensees would not be found deficient and the commission would not take enforcement action for violations as long as certain conditions are met. The conditions outlined in the guidance document are reflected in the proposed rule. One of the conditions in the guidance document required licensees utilizing the guidance to have policies and procedures that lists the accessible drugs.

The process of creating new policies, procedures, and training would produce the majority of costs for the adoption of this rule. These documents would likely be developed by the responsible pharmacy manager. Commission staff estimate that the hours needed to develop adequate policies and procedures would be around two to four hours for conceptualization, two to four hours to review, two to four hours for other revisions or improvements, and two to four hours to create training modules to inform staff members with varying backgrounds and knowledge levels on the updated policies and procedures.¹

In Washington state the median wage for a responsible pharmacy manager is \$63.82² per hour. The hourly rate was then multiplied by 16 which encompasses the maximum hours estimated for development: Four hours for conceptualization, four hours of revision, four hours of review, and four hours of training development. This would bring the total for a health care facility's compliance for this rule to be a maximum of \$1,021.12 for developing new policies and procedures. However, it is likely that some health care facilities that faced supply chain disruption have already developed new policies and procedures to meet the requirements in the guidance document, *Access to Drugs Stored Outside of the Pharmacy*.

The initial development of the policies and procedures is likely a one-time cost with smaller cost associated with updating, if necessary. To reduce costs, certain steps in the development process for new policies and procedures could be delegated to nonmanagement personnel. Delegating parts of the conceptualization, drafting, and revisions to nonmanagement staff could reduce some of the costs associated with labor. Parts of the process could be developed by a pharmacist, materials handler, administrative staff, and staff nurse, or other qualified personnel, then reviewed and finalized by management staff.

Summary of all Cost(s):

SBEIS Table 2. Summary of Section 3 Probable Cost(s):

WAC Section and Title	Probable Cost(s)
WAC 246-945-455 Drugs stored outside of the pharmacy	Policies, Procedures, and Training Development \$1,021.12

The commission determined that the overall benefits of reducing unintended disruption of facility supply chain management causing administrative burden on health care facilities and increasing patient safety by releasing licensed staff to focus on patient care outweigh the cost of developing policies, procedures, and training.

SECTION 4: Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated: No, the costs of the proposed rule \$1,021.12 are less than the minor cost threshold \$19,161.00.

Summary of how the costs were calculated: The costs of compliance for this rule were calculated by multiplying the salary of the responsible pharmacy manager, which was \$63.82 per hour, by the 16 hours needed for conceptualization, review, revisions, and training development. The maximum total cost of compliance for this rule was determined to be \$1,021.12.

¹ Time range determined via consultation with the staff pharmacist consultant, who is a licensed pharmacist.

² Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment and Wage Statistics*, Pharmacists, at <https://www.bls.gov/oes/current/oes291051.htm> (visited March 25, 2024).

A copy of the detailed cost calculations may be obtained by contacting Haleigh Mauldin, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-890-0720, fax 360-236-2260, TTY 711, email PharmacyRules@doh.wa.gov.

August 7, 2024
Hawkins DeFrance, PharmD, Chair
Pharmacy Quality Assurance Commission

OTS-5428.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-455 Drugs stored outside of the pharmacy. (1) In order for drugs to be stored in a designated area outside the pharmacy including, but not limited to, floor stock, in an emergency cabinet, in an emergency kit, or as emergency outpatient drug delivery from an emergency department at a registered institutional facility, the following conditions must be met:

(a) Drugs stored in such a manner shall remain under the control of, and be routinely monitored by, the supplying pharmacy;

(b) The supplying pharmacy shall develop and implement policies and procedures to prevent and detect unauthorized access, document drugs used, returned and wasted, and regular inventory procedures;

(c) Access to drugs stored in a designated area outside of the pharmacy must be limited to health care professionals licensed under the chapters specified in RCW 18.130.040 acting within their scope, and nursing students as provided in WAC 246-945-450, except as provided in subsection (2) of this section;

(d) The designated area is appropriately equipped to ensure security and protection from diversion or tampering; and

(e) The designated area must be located in a facility ((is able)) licensed or otherwise authorized by law to possess and store drugs.

(2) An unlicensed employee or contractor of the receiving facility may access drugs stored in the designated area if all of the following are met:

(a) The unlicensed employee or contractor is acting within their scope of employment or contract;

(b) The unlicensed employee or contractor is accessing drugs for the purpose of supply chain management at the receiving facility;

(c) The unlicensed employee or contractor is only accessing drugs listed in a policy and procedure that is readily retrievable by the supplying pharmacy; and

(d) The unlicensed employee or contractor is not accessing controlled substances.

(3) For nursing homes and hospice programs an emergency kit or supplemental dose kit must comply with RCW 18.64.560.

WSR 24-17-007

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed August 8, 2024, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-07-105.

Title of Rule and Other Identifying Information: Pharmacy intern credentials; extending the duration of temporary practice permits for pharmacy interns and establishing a renewal extension process for pharmacy interns. The pharmacy quality assurance commission (commission) is proposing to amend WAC 246-945-155 and 246-945-156 related to pharmacy intern registration requirements. Specifically, the commission proposes to amend WAC 246-945-155 to grant additional renewals to pharmacy interns to address concerns raised by interested parties. Additionally, the commission proposes to amend WAC 246-945-156 to extend the duration of pharmacy intern temporary practice permits to 180 days which stems from compliance with 2SHB 1009 (chapter 165, Laws of 2023).

Hearing Location(s): On October 10, 2024, at 10:30 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Room S117/118, Tumwater, WA 98501; or virtually via Zoom [https://us02web.zoom.us/webinar/tZwvcu-orjooGdL0uceE3WWkJLsRorLzko_bx/ics?icsToken=98tyKuGgrD4sGtSUshqBRpw-AI_4M_TziH5BjadxzArmJnNkVQjcgVfWpPaBTCTPf](https://us02web.zoom.us/join/https://us02web.zoom.us/webinar/tZwvcu-orjooGdL0uceE3WWkJLsRorLzko_bx/ics?icsToken=98tyKuGgrD4sGtSUshqBRpw-AI_4M_TziH5BjadxzArmJnNkVQjcgVfWpPaBTCTPf). To access the meeting on October 10, 2024, at 9:00 a.m., go to <https://us02web.zoom.us/j/87143495001>. The access options include One-tap mobile: US +12532158782,,86114958466# or +16699009128,,86114958466#; or by telephone: Dial (for higher quality, dial a number based on your current location): US +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 871 4349 5001. International numbers available at <https://us02web.zoom.us/j/87143495001>.

Date of Intended Adoption: October 10, 2024.

Submit Written Comments to: Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, beginning the date and time of this filing, by October 3, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Julia Katz, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by October 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is twofold: To allow additional license renewals for pharmacy intern registrants and to extend the duration of pharmacy intern temporary practice permits. Amending WAC 246-945-155 allows pharmacy intern registrants a process for renewing their registration beyond the current two-time limit. Amending WAC 246-945-156 complies with 2SHB 1009. Section 4 of 2SHB 1009 took effect on October 1, 2023, and requires each licensing authority to issue temporary practice permits for a minimum of 180 days to applicants who are spouses of military personnel subject to a military transfer, and who are licensed, certified, or registered in another state to perform professional services in that state. The change to a 180-day permit from 90 days applies to all permit holders.

Reasons Supporting Proposal: The goal of amending pharmacy intern license renewal capabilities is to accommodate registrants who take additional time or experience extenuating circumstances to complete pharmacy school. The commission has heard from interested parties that these methods of flexibility would be valuable for registrants. The primary goal of extending the validity for pharmacy intern temporary practice permits from 90 to 180 days is to comply with 2SHB 1009; however, it will apply to all permit holders, not just spouses of military personnel. Secondarily, it will accomplish uniform temporary practice permits under the commission's purview.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.080, and 18.340.020.

Statute Being Implemented: RCW 18.64.080 and 18.340.020.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Julia Katz, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058; and Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

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 Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, TTY 711, email <https://fortress.wa.gov/doh/policyreview/>.

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).

Explanation of exemptions: Amendments to WAC 246-945-155 and 246-945-156 only impact pharmacy intern licensees and not facility licensees.

Scope of exemption for rule proposal:

Is fully exempt.

August 7, 2024

Hawkins DeFrance, PharmD, Chair
Pharmacy Quality Assurance Commission

OTS-5497.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-155 Pharmacy interns—Registration requirements.

(1) Unless otherwise stated, each individual shall register with the commission, as a pharmacy intern before beginning pharmacy practice experiences in Washington state. The commission shall grant a registration to practice pharmacy as a pharmacy intern to an individual who is:

(a) Currently enrolled in a professional degree program of a commission accredited school or college of pharmacy and making satisfactory progress towards meeting the requirements for licensure as a pharmacist;

(b) A graduate of a commission accredited school or college of pharmacy;

(c) A graduate of a school or college of pharmacy located outside the United States who has established educational equivalency by obtaining certification by FPGEC;

(d) Required by the commission to be an intern because the commission has determined the individual needs to complete additional practical experience before a pharmacist license is issued or reissued; or

(e) An out-of-state pharmacist enrolled in or participating in an established residency program.

(2) A pharmacy intern shall practice under the immediate supervision of a licensed pharmacist except in accordance with RCW 18.64.253.

(3) A pharmacy intern registration (~~can only~~) may be renewed (~~twice~~) three times. The commission may, for good cause shown, authorize additional renewals for a pharmacy intern registrant who meets all pharmacy intern registration requirements in WAC 246-945-150, subsection (1)(a) through (e) of this section, RCW 18.64.080, and provides an explanation and documentation of good cause.

(4) The commission may consider a pharmacy intern registration inoperable or superseded if one of the following occurs:

(a) A pharmacy intern has not graduated from and is no longer enrolled or in good standing with a commission accredited school or college of pharmacy.

(b) A pharmacy intern is issued a license to practice as a pharmacist in Washington state or another U.S. jurisdiction.

AMENDATORY SECTION (Amending WSR 24-11-060, filed 5/13/24, effective 6/13/24)

WAC 246-945-156 Pharmacy intern—Temporary practice permit. (1)

An individual that holds a pharmacy intern registration in another U.S. jurisdiction, that has registration standards substantially equivalent to Washington, may request a temporary practice permit if:

(a) The applicant is not subject to denial of a credential or issuance of a conditional or restricted credential in any state;

(b) Does not have a criminal record in Washington state;

(c) The applicant's fingerprint-based national background check results are pending; and

(d) The applicant meets WAC 246-945-155 (1)(a) or (b).

(2) To request a temporary practice permit, the pharmacy intern applicant shall submit a written request for a temporary practice permit, and any applicable fees in accordance with WAC 246-945-990 through 246-945-992.

(3) A temporary practice permit expires:

(a) When the pharmacy intern registration is issued;

(b) When a notice of decision on the pharmacy intern registration application is mailed to the applicant; or

(c) (~~Ninety~~) One hundred eighty days after the temporary practice permit is issued. The applicant may obtain a one-time extension of up to 90 days with approval of the commission.

WSR 24-17-014
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 8, 2024, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-012.

Title of Rule and Other Identifying Information: WAC

392-172A-05135 Transfer of parental rights to the student at age of majority.

Hearing Location(s): On September 24, 2024, at 10:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page ospik12.wa.us/policy-funding/ospirulemaking-activity. For participation questions, please email sirena.wu@k12.wa.us.

Date of Intended Adoption: September 26, 2024.

Submit Written Comments to: Darryl Colman, OSPI, P.O. Box 47200, Olympia, WA 98504, email darryl.colman@k12.wa.us, beginning September 4, 2024, 8:00 a.m., by September 24, 2024, no later than 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email sirena.wu@k12.wa.us, by September 17, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing rule making to replace the statutory references to chapter 11.88 RCW, which has been repealed under ESSB 6287 (2020), with chapter 11.130 RCW under WAC 392-172A-05135. The proposed rule amendment ensures updated and consistent references to RCW.

Reasons Supporting Proposal: The proposed amendments are intended to update and replace statutory references under WAC 392-172A-05135 that have been repealed under ESSB 6287 (2020).

Statutory Authority for Adoption: RCW 28A.155.090.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Darryl Colman, OSPI, 600 South Washington Street, Olympia, WA; and Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

August 8, 2024

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-5251.1

AMENDATORY SECTION (Amending WSR 21-19-065, filed 9/14/21, effective 10/15/21)

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) Subject to subsections (4) and (5) of this section, when a student eligible for special education services reaches the age of (~~eighteen~~) 18 or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act and this chapter transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

(4) Students who have been determined to be incapacitated pursuant to chapter (~~11.88~~) 11.130 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of (~~eighteen~~) 18 who have not been determined incapacitated under chapter (~~11.88~~) 11.130 RCW, may be certified as unable to provide informed consent or to make educational decisions, and have an educational representative appointed for them pursuant to the following procedures:

(a) Two separate professionals must state in writing they have conducted a personal examination or interview with the student, the student is incapable of providing informed consent to make educational decisions, and the student has been informed of this decision. The professionals must be:

(i) A medical doctor licensed in the state where the doctor practices medicine;

(ii) A physician's assistant whose certification is countersigned by a supervising physician;

(iii) A certified nurse practitioner;

(iv) A licensed clinical psychologist; or

(v) A guardian ad litem appointed for the student.

(b) When it receives the required written certification, the school district will designate an educational representative from the following list and in the following order of representation:

(i) The student's spouse;

(ii) The student's parent(s);

(iii) Another adult relative willing to act as the student's educational representative; or

(iv) A surrogate educational representative appointed pursuant to and acting in accordance with WAC 392-172A-05130.

(c) A student shall be certified as unable to provide informed consent pursuant to this section for a period of one year. However, the student, or an adult with a bona fide interest in and knowledge of

the student, may challenge the certification at any time. During the pendency of any challenge, the school district may not rely on the educational representative under this section until the educational representative obtains a new certification under the procedures outlined in (a) of this subsection. If a guardianship action is filed on behalf of the student while a certification is in effect, the school district must follow any court orders in the guardianship proceeding regarding the student's capacity.

(6) Nothing within this section shall prevent a student, who has reached the age of majority, from authorizing another adult to make educational decisions on that student's behalf using a power of attorney consistent with the requirements in chapter 11.125 RCW.

WSR 24-17-022
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-14, Filed August 9, 2024, 7:42 a.m.]

Continuance of WSR 24-14-149.

Preproposal statement of inquiry was filed as WSR 23-16-092.

Title of Rule and Other Identifying Information: WAC 220-500-041
Construction, creation and maintenance of roads, trails, and structures.

This continuance is being filed so that the Washington department of fish and wildlife (WDFW) may continue to confer with stakeholders and the public in developing the proposed rule.

Hearing Location(s): On September 30, 2024, at 4:00 - 5:00 p.m., via Zoom <https://us06web.zoom.us/j/88387520816>; or One-tap mobile +12532050468,,88387520816# US, +12532158782,,88387520816# US (Tacoma). The public can provide comments during webinars by phone or electronic device. Attendees that provide verbal comments are audio only. To testify, you must register by 8:00 a.m., September 29, 2024, <https://forms.office.com/pages/responsepage.aspx?id=F-LQEU4mCkCLoFfcwSfXLSrgNExZzOBBrIzn0zLRUFZURDBVT1ZIUVVWNk9NWURVN1pHODNYWjZTVy4u&web=1&wdLOR=cC663E017-9806-4FEB-8D43-2CACC029A5FA>. At the appropriate time to speak, you will be recognized by your partial phone number or your Zoom username and staff will unmute your connection. You will be asked to state your name and residence for the record, just as if you were attending the meeting in person. Please also state whether you are representing yourself or a group or organization.

Date of Intended Adoption: On or after October 5, 2024.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email Constructionrule2024@publicinput.com, fax 360-902-2162, <https://publicinput.com/constructionrule2024>, by phone 855-925-2801, project code 8413, SEPA comments <https://publicinput.com/2024constructionsepa> or email 2024constructionsepa@publicinput.com, by 11:59 p.m. on September 30, 2024.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, <http://wdfw.wa.gov/accessibility/requests-accommodation>, by September 29, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule will help WDFW better manage its wildlife areas and the public use that is occurring on them. It will give WDFW law enforcement remedies to discourage the construction, creation, and maintenance of roads, trails, and structures without WDFW approval, which can otherwise pose a threat to natural or cultural resources and create safety hazards for public users.

Reasons Supporting Proposal: The construction, creation, and maintenance of roads, trails, and structures that have been user-created without approval or authorization from WDFW staff are often in locations or conditions that are environmentally, culturally, or financially unsustainable. A proliferation of unauthorized roads and trails has appeared in recent years on lands managed by WDFW. These roads and trails often cut through sensitive habitat, interrupt habitat connectivity, and cause direct damage to vegetation, wildlife, and tribal resources. User-created roads and trails lack the deliberate planning, design and evaluation of impacts on the land that are neces-

sary to place or build them appropriately. Currently, without the legal remedies or statutory authority to prevent or cite individuals for the creation of roads, trails, and structures without approval, there is a risk that these activities will continue to proliferate and degrade sensitive resources.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210, and 77.15.040.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210, and 77.15.040.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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 proposal does not require a cost-benefit analysis 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(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

August 9, 2024
Scott Bird
Rules Coordinator

WSR 24-17-029
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 12, 2024, 1:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-084.

Title of Rule and Other Identifying Information: WAC 392-123-060
Petition to budget receivables collectible in future fiscal periods.

Hearing Location(s): On October 10, 2024, at 10:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page [Ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity](https://ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity). For participation questions, please email sirena.wu@k12.wa.us.

Date of Intended Adoption: October 14, 2024.

Submit Written Comments to: T.J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email Thomas.kelly@k12.wa.us, beginning September 18, 2024, 8:00 a.m., by October 10, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email sirena.wu@k12.wa.us, by October 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In alignment with ESSB 5293, passed by the Washington state legislature in 2023, OSPI is proposing rule making to implement an exemption for school districts and charter schools for the 2024-2025 and 2025-2026 budget periods from accepting binding conditions when the proceeds of an interfund loan have been used to balance deficit fund balances. The rules would allow this exemption in order to address budget destabilization in the aftermath of the COVID-19 pandemic, which is consistent with the purpose described under ESSB 5293 (2023) and RCW 28A.505.130.

Reasons Supporting Proposal: Consistent with the purpose described under ESSB 5293 (2023) and RCW 28A.505.130, the proposed rule making to allow school districts and charter schools an exemption from accepting binding conditions when using the proceeds of an interfund loan to balance deficit fund balances for the 2024-2025 and 2025-2026 budget periods would address budget destabilization as a result of the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220.

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

Name of Agency Personnel Responsible for Drafting and Implementation: T.J. Kelly, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does

not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:
Is fully exempt.

August 12, 2024
Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-5283.1

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-123-060 Petition to budget receivables collectible in future fiscal periods. When a school district or charter school is unable to prepare a budget or a budget extension in which the estimated revenues for the budgeted fiscal period plus the estimated fund balance or actual fund balance in case of a budget extension, at the beginning of the budgeted fiscal period less the ending reserved fund balance for the budgeted fiscal year do not at least equal the estimated expenditures for the budgeted fiscal period, the school district board of directors or charter school board may deliver a petition in writing at least (~~twenty~~) 20 days before the budget or budget extension is scheduled for adoption to the superintendent of public instruction requesting permission to include receivables collectible in future periods beyond the fiscal period being budgeted in order to balance the budget or budget extension for the fiscal period being budgeted. Said petition shall include a resolution of the school board requesting permission to budget receivables collectible in future fiscal periods and other such information as the superintendent of public instruction shall deem as necessary.

If such permission is granted, it shall be in writing, and it shall contain conditions, binding on the district or charter school, designed to improve the district's or charter school's financial condition.

For the 2024-2025 and 2025-2026 budget periods, accepting binding conditions due to a negative fund balance position is not required for school districts or charter schools that have an interfund loan for more than the amount of the negative position in the receiving fund. This timebound exception is provided in RCW 28A.505.130 so long as the transaction date on the loan occurs on or before June 30, 2024.

WSR 24-17-030
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 12, 2024, 1:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-24-098.

Title of Rule and Other Identifying Information: Chapter 392-136 WAC, Finance—Conversion of accumulated sick leave; and chapter 392-136A WAC, Finance—Shared leave.

Hearing Location(s): On October 9, 2024, at 11:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page [Ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity](https://ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity). For participation questions, please email sirena.wu@k12.wa.us.

Date of Intended Adoption: October 11, 2024.

Submit Written Comments to: T.J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email Thomas.kelly@k12.wa.us, beginning September 18, 2024, 8:00 a.m., by October 9, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email sirena.wu@k12.wa.us, by October 2, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing rule making to reflect changes under HB 2739 (2020) in order to align shared leave provisions for school district and educational service district employees with those for state employees. Additionally, potential rule changes to the employee attendance incentive program for school district and educational service district employees will be reviewed to ensure consistency with those for state employees.

Reasons Supporting Proposal: Under section 2 (1)(f) of HB 2739 (2020), the legislature removed the requirement for employees to be found ineligible for benefits under chapter 51.32 RCW in order for school district and educational service district employees to receive shared leave. The proposed rule amendments to the shared leave provisions include updates to reflect this change. In addition, proposed updates regarding the employee attendance incentive program clarify existing rule language that the formula for calculating sick leave cashout for eligible school district and educational service district employees who work part-time at the time of departure would be the same as that for full-time employees. The updated rules would ensure that the conversion rate in determining monetary compensation for accrued sick leave is applied uniformly for both state employees and school district and educational service district employees, regardless of full-time equivalent status at time of separation from employment.

Statutory Authority for Adoption: RCW 28A.310.490, 28A.400.210, 28A.400.380.

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

Name of Agency Personnel Responsible for Drafting and Implementation: T.J. Kelly, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

August 12, 2024

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-5761.1

AMENDATORY SECTION (Amending WSR 84-04-034, filed 1/26/84)

WAC 392-136-015 Annual conversion of accumulated sick leave.

(1) Commencing in January 1981, and each January thereafter, each eligible, current employee of a school district and educational service district may elect to convert excess sick leave to monetary compensation as provided in this section.

(2) Eligible employees, excess sick leave and the conversion of excess sick leave to monetary compensation shall be determined as follows:

(a) Eligible employees: In order to be eligible to convert excess sick leave days to monetary compensation, an employee:

(i) Shall be an employee of an educational service district or an employee of a school district that has adopted an attendance incentive program covering such employee pursuant to WAC 392-136-065;

(ii) Shall have accumulated in excess of (~~sixty~~) 60 full days of unused sick leave at a rate of accumulation no greater than one full day per month (a maximum of (~~twelve~~) 12 days per year) as of the end of the previous calendar year; and

(iii) Shall provide written notice to his or her employer during the month of January of his or her intent to convert excess sick leave days to monetary compensation.

(b) Excess sick leave: The number of sick leave days which an eligible employee may convert shall be determined by:

(i) Taking the number of sick leave days in excess of (~~sixty~~) 60 full days that were accumulated by the employee during the previous calendar year at a rate of accumulation no greater than one full day per month of employment as provided by the leave policies of the district(s) of employment (a maximum of (~~twelve~~) 12 days per year); and

(ii) Subtracting therefrom the number of sick leave days used by the employee during the previous calendar year.

The remainder, if positive, shall constitute the number of sick leave days which may be converted to monetary compensation.

(c) Rate of conversion: Sick leave days that are eligible for conversion shall be converted to monetary compensation at the rate of (~~(twenty-five)~~) 25 percent of (~~(an employee's current, full-time daily rate of compensation for each full day of eligible sick leave)~~) a daily rate of pay at the employee's current hourly rate of compensation based on a 1.0 full-time equivalent staff schedule. Partial days of eligible sick leave shall be converted on a pro rata basis.

(3) All sick leave days converted pursuant to this section shall be deducted from an employee's accumulated sick leave balance.

(4) Compensation received pursuant to this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

AMENDATORY SECTION (Amending WSR 05-17-175, filed 8/23/05, effective 9/23/05)

WAC 392-136-020 Conversion of sick leave upon separation from district employment. (1) Eligible employees: Upon separation from district employment the following employees may personally, or through their estate in the event of death, elect to convert all eligible, accumulated, unused sick leave up to a maximum of one hundred eighty days to monetary compensation as provided in this section:

(a) Eligible educational service district employees are those who terminate employment with the educational service district due to either retirement or death.

(b) Eligible school district employees are those who qualify under an attendance incentive program established by the school district board of directors pursuant to WAC 392-136-065 and who:

(i) Separate from employment with the school district due to death or retirement; or

(ii) After June 7, 2000, separate from employment with the school district and are at least age (~~(fifty-five)~~) 55 and:

(A) Have at least (~~(ten)~~) 10 years of service under teachers' retirement plan 3 as defined in RCW 41.32.010(40), or under the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010(31); or

(B) Have at least (~~(fifteen)~~) 15 years of service under teachers' retirement system plan 2 as defined in RCW 41.32.010(39), under Washington school employees' retirement system plan 2 as defined in RCW 41.35.010(30), or under public employees' retirement system plan 2 as defined in RCW 41.40.010(34).

(c) In order to receive reimbursement for unused sick leave, by virtue of retirement pursuant to subsection (1)(a) or (1)(b)(i) of this section the employee must have separated from such employment and have been granted a retirement allowance under the laws governing the teachers' retirement system, the public employees' retirement system, or the school employees' retirement system whichever applies; however, it is not necessary that the employee actually file for retirement prior to the date of his or her separation so long as the application is thereafter filed within a reasonable period of time and without the occurrence of any intervening covered employment.

(d) Eligible school district employees who qualify under an attendance incentive program established by the school district board of

directors pursuant to WAC 392-136-065 and who have previously separated from a school district due to retirement may cash out subsequent earned sick leave under the following exceptions:

(i) The employee ceases receipt of retirement benefits and reestablishes membership in the retirement system, including resuming payments into the system; or

(ii) The employee establishes, and makes payment into, a second retirement system from which they may subsequently retire.

(2) Eligible sick leave days include all unused sick leave days that have been accumulated from year to year up to a maximum of the number of contracted days agreed to in a given contract, but not greater than one year, by an eligible employee, less sick leave days previously converted pursuant to WAC 392-136-015 and those credited as service rendered for retirement purposes.

(3) Rate of conversion: Sick leave days that are eligible for conversion shall be converted to monetary compensation at the rate of (~~twenty-five~~) 25 percent of an employee's (~~full-time daily rate of compensation at the time of termination of employment for each full day of eligible sick leave~~) daily rate of pay at the employee's current hourly rate of compensation based on a 1.0 full-time equivalent staff schedule. Partial days of eligible sick leave shall be converted on a pro rata basis.

(4) Deduction of converted days: All sick leave days converted pursuant to this section shall be deducted from an employee's accumulated sick leave balance.

(5) Exclusion from retirement allowance: Compensation received pursuant to this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

OTS-5762.1

AMENDATORY SECTION (Amending WSR 23-05-082, filed 2/14/23, effective 3/17/23)

WAC 392-136A-030 Eligibility. In the event a district implements a shared leave program, an employee shall be eligible to receive shared leave if the district has determined the employee meets the following conditions:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault, or stalking;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;

(g) Needs the time for parental leave; or

(h) Is sick or temporarily disabled because of pregnancy disability.

(2) The condition(s) listed in subsection (1) of this section has caused, or is likely to cause, the employee to go on leave without pay or terminate district employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete leave in accordance with WAC 392-136A-040.

(5) The employee has abided by district policies regarding:

(a) Sick leave use if the employee qualifies under subsection (1) (a), (d), (g), or (h) of this section; or

(b) Military leave use if the employee qualifies under subsection (1) (b) of this section.

~~(6) ((If the illness or injury is work-related, the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.~~

~~(7))~~ The employee's job is one in which annual leave, sick leave, military leave, or personal holiday can be used and accrued.

AMENDATORY SECTION (Amending WSR 23-05-082, filed 2/14/23, effective 3/17/23)

WAC 392-136A-045 Maximum amount. (1) The district determines the amount of shared leave, if any, which a leave recipient may receive. However, a leave recipient must not receive more than 522 days of shared leave during total district employment. The district may authorize shared leave in excess of 522 days in extraordinary circumstances for a leave recipient qualifying for shared leave because they are suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature.

Districts are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

(2) The district may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 392-136A-070.

(3) An employee receiving shared leave for parental leave in accordance with WAC 392-136A-020 may receive up to 16 weeks of parental leave immediately after the birth or placement, unless the birth parent suffers from a pregnancy disability. When a birth parent suffers from a pregnancy disability, the period of 16 weeks for parental leave begins immediately after the pregnancy disability has ended provided the parental leave is used within the first year of the child's life.

(4) An employee receiving industrial insurance wage replacement benefits may receive up to 25 percent of their base salary from the receipt of shared leave.

WSR 24-17-031
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 12, 2024, 1:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-038.

Title of Rule and Other Identifying Information: WAC 392-121-436
Emergency advance payments—School district application, 392-121-438
Emergency advance payments—Approval criteria, and 392-121-443 Emer-
gency advance payments—Repayment of advances.

Hearing Location(s): On October 15, 2024, at 11:30 a.m., virtual
public hearing via Zoom (call-in option also available). Participation
link available on the office of superintendent of public instruction
(OSPI) rules web page [Ospi.k12.wa.us/policy-funding/ospi-rulemaking-
activity](https://ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity). For participation questions, please email
sirena.wu@k12.wa.us.

Date of Intended Adoption: October 17, 2024.

Submit Written Comments to: T.J. Kelly, OSPI, P.O. Box 47200,
Olympia, WA 98504, email Thomas.kelly@k12.wa.us, beginning September
18, 2024, 8:00 a.m., by October 15, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI
Rules Coordinator, phone 360-480-9317, TTY 360-664-3631, email
sirena.wu@k12.wa.us, by October 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: OSPI is proposing rule making to extend
the apportionment advance request and payout periods for school dis-
tricts and charter schools, and to establish requirements for repay-
ment assurance and apportionment advance repayment schedules for funds
received. As a result of enrollment decline, expiring access to feder-
al COVID[-19] relief, unanticipated rise in uncontrollable costs, and
other unforeseen events, many districts have experienced unprecedented
financial difficulties. Extending the apportionment request, payout,
and repayment periods would allow districts to access funds that are
essential for the continuity of operations, maintenance, and other ed-
ucation services.

Reasons Supporting Proposal: School districts have experienced
unprecedented financial difficulties due to enrollment decline, expir-
ing access to federal COVID[-19] relief, unanticipated rise in uncon-
trollable costs, and other unforeseen events. By extending the appor-
tionment advance request and payout periods, school districts and
charter schools would be able to access funds that are necessary for
the continuity of operations, maintenance, and other education serv-
ices.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220,
28A.510.250.

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

Name of Agency Personnel Responsible for Drafting and Implementa-
tion: T.J. Kelly, OSPI, 600 South Washington Street, Olympia, WA; En-
forcement: OSPI, 600 South Washington Street, Olympia, WA.

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(4).

Is exempt under RCW RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

August 12, 2024

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-5363.1

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-436 Emergency advance payments—School district application. The board of directors of a school district or a charter school board may apply for any emergency advance on the school district's or charter school's basic education allocation. The application shall take the form of a resolution adopted by the board setting forth the following:

- (1) The nature of the unforeseen condition requiring the advance;
- (2) The amount requested to be advanced;
- (3) The net cash and investment balance of the general fund as of the date of the resolution;
- (4) A forecast of the general fund receipts, disbursements, and net cash and investment balance for each month remaining in the fiscal year; ~~((and))~~
- (5) A disclosure of any existing or planned general fund revenue anticipation notes ~~((-))~~;
- (6) A disclosure of any existing or planned general fund loan to or from another fund of the school district or charter school; and
- (7) A written acknowledgment that funds advanced will be repaid in accordance with WAC 392-121-443, subject to approval by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-438 Emergency advance payments—Approval criteria. The superintendent of public instruction shall approve requests for an emergency advance if the following conditions are met:

- (1) The unforeseen condition causing the need for the emergency advance could not have been anticipated by a reasonably prudent person.
- (2) It is probable that if the emergency advance is not made that the school district or charter school will be on:

- (a) An interest-bearing, warrant-issuing basis within two months following the receipt of the resolution; and
- (b) Warrant interest for at least three months from September through June.
- (3) The school district or charter school shall not have:
 - (a) Cash investments of the general fund during the months it estimates that it would pay warrant interest except for the emergency advance; or
 - (b) Inter-fund loans from the general fund to any other funds during the months it estimates that it would pay warrant interest; or
 - (c) Any existing or anticipated general fund revenue anticipated notes.

Applications and payouts for apportionment advances can be processed only during the months of October through July. Advance requests for the months of May and June shall not be approved if the superintendent of public instruction determines that the school district or charter school would be short paid at the end of the fiscal year due to lack of appropriation of funds after considering transfer authority.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-443 Emergency advance payments—Repayment of advances. Repayments of advances will be accomplished by a reduction in the school district's or charter school's apportionment payments ~~((~~en~~))~~. Under RCW 28A.510.250, all apportionment advances must be repaid during the apportionment year in which the funds are advanced. The repayment requirements are defined as follows:

- (1) For advances received before June, at least 50 percent of the amount advanced must be repaid in or before June ~~((in))~~ of the current school year, with the remaining balance repaid no later than August of the current school year.
- (2) For advances received in June, at least 50 percent of the amount advanced must be repaid in July of the current school year, with the remaining balance paid in August of the current school year.
- (3) For advances received in July, the full balance must be repaid in August of the current school year.
- (4) In no instance can an apportionment advance be repaid and re-approved in the subsequent month.

WSR 24-17-046

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed August 14, 2024, 7:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-035.

Title of Rule and Other Identifying Information: Prescription drug label accessibility standards. The pharmacy quality assurance commission (commission) is proposing amendments to WAC 246-945-015 and adding four new sections to chapter 246-945 WAC establishing prescription label accessibility standards. The proposed accessibility program focuses on ensuring meaningful access to prescription information for patients with visual impairments or print disabilities, and for limited English proficient (LEP) patients. This rule making is in response to two separate rule-making petitions approved by the commission.

Hearing Location(s): On October 4, 2024, at 9:00 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual. To access the meeting on October 4, 2024, at 9:00 a.m., go to <https://us02web.zoom.us/j/87143495001> or <https://zoom.us/join> and use the Webinar ID 871 4349 5001. The access options include One-tap mobile +12532158782,,87143495001# US (Tacoma), +12532050468,,87143495001# US; or telephone: Dial (for higher quality, dial a number based on your current location) +1 253-215-8782 US (Tacoma), +1 253 205 0468 US.

Date of Intended Adoption: October 4, 2024.

Submit Written Comments to: Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, beginning the date and time of filing, by October 3, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Joshua Munroe, phone 360-503-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by September 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule addresses the "protection and promotion of the public health, safety, and welfare" per RCW 18.64.005(7) by ensuring that all practitioners and facilities in the state of Washington dispensing prescription medications provide information to the patient on the prescription container in a format that can be accurately comprehended by the patient. There are two methods to achieve this goal:

1. Provide the complete directions for use for the prescription medication on the container label in the language with which the patient is most comfortable.

2. Provide the complete directions for use, patient name, patient species (for veterinary prescriptions), drug name, and drug quantity for the prescription medication on the container label in at least one visually accessible format. These formats are large print, Braille, QR code or equivalent tool, and a prescription reader that delivers the necessary information in an audible format.

Both accessibility methods must be used for the same prescription if doing so best accommodates the patient's needs to comprehend the prescription information. Dispensing practitioners and dispensing facilities must inform patients about the availability of accessibility services through the use of posted signage and direct communication

with the patient or patient's representative. Accessibility services must also be provided to the patient at no additional cost.

The proposed rule creates four new sections, WAC 246-945-026, 246-945-027, 246-945-028, and 246-945-029, describing what dispensing practitioners and dispensing facilities must do to provide accessible labeling services to patients. WAC 246-945-015 is also amended to inform regulated entities with prescriptive authority that they must comply with the new sections of rule.

Clear comprehension of prescription drug label information is a matter of public health and safety for all persons, regardless of disability or language barriers.

Reasons Supporting Proposal: Existing minimum labeling requirements described in chapter 246-945 WAC lack the detail needed to accommodate patients who require alternative prescription drug labels. Rule making is necessary to establish drug label accessibility standards in chapter 246-945 WAC, and to provide clear guidance for both patients requesting alternative prescription drug labels and the dispensing facilities and dispensing practitioners fulfilling those requests.

The main alternative to rule making is to defer regulation to various federal laws addressing the provision of accessibility services. Those federal laws focus on private enterprises providing accessibility services in public spaces to individuals who are print disabled, visually impaired, or do not speak or understand English. However, they do not set specific prescription labeling standards for those same patient populations.

If the commission does not adopt the proposed rule then the commission and department of health (department) anticipates visually impaired, print disabled, and LEP individuals will be harmed from not being able to accurately comprehend information for prescribed medications. Patients face consequences such as emergency room visits, injury, or death resulting from not being able to accurately comprehend information for prescribed medications. Adopting the proposed rule would help reduce these consequences.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.240, and 69.50.301.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joshua Munroe, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058; Enforcement: Marlee O'Neil, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

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 Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-503-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

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

Is exempt under RCW 19.85.025(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: Proposed WAC 246-945-015 is exempt from analysis under RCW 34.05.310 (4) (d) because the proposed amend-

ments in this section clarify the rule by pointing to another section of the rule. WAC 246-945-026 is exempt from analysis under RCW 34.05.310 (4)(d) because the defined terms in this section clarify the meaning of the terms and are not intended to set standards.

Scope of exemption for rule proposal:

Is partially exempt.

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

Small Business Economic Impact Statement (SBEIS)

SBEIS - Section 1: A brief description of the proposed rule, including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The proposed accessible labeling rules would require all dispensing facilities (i.e., pharmacies) and dispensing practitioners, health professionals with prescriptive authority in the state of Washington, to be able to provide meaningful access to prescription information for medications dispensed to patients. Accessible labeling services would be provided at the patient's request, and patients must be made aware of such services by the entity that would dispense their prescribed medications.

The commission initiated rule making in response to two petitions submitted by interested parties on the topic of prescription information accessibility. On October 22, 2021, the commission approved a rule petition requesting pharmacies provide accessible medication label options for patients with visual impairments or print disabilities. Minimum requirements for outpatient prescription labeling are described in WAC 246-945-015 and 246-945-016, but do not reference accommodations for patients who are visually impaired, blind, or have other disabilities requiring additional prescription label options.

The commission also received and approved a rule petition in January 2022 requesting that translations of prescription information on prescription labels be made available in multiple languages for ambulatory (community based) patients. The petition included an additional request to amend WAC 246-945-417 in order to establish a deadline by which pharmacy outpatient dispensing systems must comply with a requirement to translate prescription medication directions. Between the two petitions, the commission decided only to amend WAC 246-945-015 and instead address the petitions' requests by proposing four new sections in chapter 246-945 WAC.

Clear comprehension of prescription drug label information is a matter of public health and safety for all persons, regardless of ability or language, and the commission determined that opening chapter 246-945 WAC would help align state regulatory standards with patient needs.

The compliance requirements for small businesses to provide accessibility services to patients are described in WAC 246-945-027, 246-945-028, and 246-945-029.

- WAC 246-945-027 Accessible prescription information.
 - Each office of a dispensing practitioner and dispensing facility must develop policies and procedures (P&P) for the accessibility program as it applies to their respective offices or businesses.

- o All staff designated for providing accessible labeling services must receive regular training in order to understand how to provide those services to patients.
- WAC 246-945-028 Accessible prescription information for visually impaired or print disabled individuals.
 - o The entity must acquire hardware (e.g. large-print printers, Braille printers, and/or prescription readers) necessary to comply with accessible labeling standards if it does not already have such hardware.
 - o There is also present a per-label cost for most accessible labels.
- WAC 246-945-029 Translation and interpretation of accessible prescription information for LEP individuals.
 - o Offices of dispensing practitioners and dispensing facilities must be able to translate printed prescription information for LEP patients. This would likely be addressed through the use of a third-party vendor providing translation services.
 - o Oral interpretation services must also be provided on LEP patient request. This would likely be addressed through the use of a third-party vendor providing oral interpretation services.

SBEIS - Section 2: Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

SBEIS Table 1. Summary of Businesses Required to Comply to the Proposed Rule

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
621111	Offices of Physicians (except Mental Health Specialists)	2,779	\$11,301.68
621210	Offices of Dentists	3,111	\$3,721.99
621391	Offices of Podiatrists	94	\$1,820.71
541940	Veterinary Services	942	\$5,412.78
621399	Offices of All Other Miscellaneous Health Practitioners*	5,023	\$927.25
621320	Offices of Optometrists	454	\$2,447.87
456110	Pharmacies and Drug Stores	267**	\$19,161.74

* The offices of all other miscellaneous health practitioners category includes the remaining professions capable of having prescriptive authority in the State of Washington: Nurse practitioners, physician assistants, and naturopaths.

** The employment security department (ESD) reported 267 businesses categorized as pharmacies and drug stores, but department of health staff reported the number of pharmacies as of April 2024, with 1,283 facilities being standalone pharmacies and 110 facilities being hospital pharmacies.

SBEIS - Section 3: Analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.

General note: The proposed rules apply to both dispensing practitioners and dispensing facilities and therefore the range of implementation costs will be presented separately for each group. Per RCW 69.41.010(17), the definition for "practitioner" encompasses occupations with prescriptive authority in the state of Washington including but not limited to physicians, veterinarians, and dentists. Average wage information for each practitioner is provided below in SBEIS Ta-

ble 2. Dispensing facilities are defined as pharmacies, nonresident pharmacies, health care entities, or hospital pharmacy associated clinics that dispense and deliver prescriptions to the ultimate user or the ultimate user's authorized representative. Costs pertaining to facilities are estimated by the commission and department using average wage information from traditional pharmacy staff including, but not limited to, pharmacists, pharmacy technicians, and pharmacy assistants that is pulled from the United States Bureau of Labor Statistics as a primary source and other secondary sources, if needed.

***NEW SECTION* WAC 246-945-027 Accessible prescription information.**

Description: WAC 246-945-027 establishes the general provisions that dispensing facilities and offices of dispensing practitioners must comply with in order to provide accessible prescription information services to patients and individuals.

Subsection (1) outlines the types of medications and packaging types (e.g., prepackaged medications in an emergency department or drug samples as defined in RCW 69.45.010) that are exempt from accessibility requirements. Subsection (2) requires regulated entities to develop and implement P&P for compliance purposes and must provide accessibility services at no additional cost to the patient per subsection (3). Subsection (4) allows for a dispensing practitioner, an employee working in the office of a dispensing practitioner or dispensing facility, or a third party to provide accessibility services to the patient, provided that the provision of accessible prescription information occur "at the time of delivery of the filled prescription," in accordance with requirements in subsection (5). The last subsection of WAC 246-945-027 states that nothing in the section "shall diminish or impair any requirement that a dispensing facility or dispensing practitioner provide any accessibility service, language assistance, interpretation, or translation under applicable federal and state law."

It is possible that some offices of dispensing practitioners or dispensing facilities may already be in partial or full compliance with the accessibility program requirements described in this section, such as providing prescription readers or printing prescription labels in Spanish. This may mitigate implementation costs incurred by these entities, but the commission is unable to say which practitioners and facilities already comply to some degree with the proposed sections on accessible labeling services.

Cost(s): The department estimated the time it takes to train practitioners and dispensing facility staff and the time taken to develop P&P in SA Table 2. Total costs will depend on how required actions are divided up among facility staff with different reported average wages.

One-time costs: The one-time cost incurred for the purpose of complying with WAC 246-945-027 is developing P&P. Commission staff estimate, based on consultation with pharmacists and comparison to similar processes, that developing the P&P will take between 10 and 30 hours of staff time depending on how the practitioner or facility intends to provide accessibility services to their patients.

Per WAC 246-945-027(2), offices of dispensing practitioners and dispensing facilities must develop P&P to implement the requirements of WAC 246-945-027 through 246-945-029. The commission and department assume that the responsibility to develop the P&P will be given to assistants, technicians, or equivalent staff (hereafter named assistant professions), with final approval of the P&P given either by the relevant practitioner or by a pharmacist for facilities. It is expected

that the practitioner or pharmacist would take an additional one to two hours to review and approve the drafted P&P.

Using the above time estimates, the lower-cost scenario would include 10 hours of development time by assistant professions and one hour of review time by the appropriate practitioner or pharmacist. The higher-cost scenario is based off 30 hours of development time by assistant professions and two hours of review time by the appropriate practitioner or pharmacist. While it is possible that costs could be higher should the practitioner or pharmacist choose to develop the P&P by themselves, this circumstance was deemed unlikely. The following formula is used to calculate the cost range for developing P&P:

- $$\text{P\&P development cost} = (\# \text{ hours to write P\&P} * \text{average assistant profession hourly wage}) + (\# \text{ hours to review P\&P} * \text{average practitioner or pharmacist hourly wage})$$

For the purpose of this formula, an average assistant profession wage¹ of **\$23/hour** is used for both offices of dispensing practitioners and dispensing facilities to assess development costs based on the profession. The cost associated with review time is based on average wage figures for practitioners reported in SA Table 2 and the average wage figure for pharmacists is reported in SA Table 3. For example, a physician (with an average **\$122/hour** wage) would have a one-time cost for developing P&P for an accessible labeling program fall within the following range:

- Low (10 hours development + 1 hour review): **\$352**
- Median (20 hours development + 1.5 hours review): **\$643**
- High (30 hours development + 2 hours review): **\$934**

Recurrent/Ongoing costs: Ongoing costs associated with this section are encompassed by staff time associated with annual training in providing and supporting accessibility services proposed in rule. The purpose of the training includes developing and maintaining patient interaction skills, and how to utilize hardware, software, and third-party services associated with accessible labeling. The commission and department estimate that two hours of such training are needed each year to maintain and refresh the skills needed to support the proposed accessible prescription labeling program. This requirement applies to each office of a dispensing practitioner and each dispensing facility tasked with providing accessibility services to patients.

The commission and department estimate that training costs for offices of dispensing practitioners includes both the dispensing practitioners working in that office as well as any assistant professions tasked with aiding in the provision of accessible label services. The average profession assistant hourly wage is used for nonpractitioner roles when calculating training costs. Therefore, the training cost per year for each office of a dispensing practitioner was estimated by multiplying the time estimated to receive necessary training, two hours annually, by the wage of any practitioners and nonpractitioner employees in patient-facing professions, as expressed by the following formula:

- $$\text{Training cost per office of a dispensing practitioner per year} = (\# \text{ hours of training per year} * \text{practitioner hourly wage}) + (\# \text{ hours of training per year} * \text{average assistant profession hourly wage})$$

Training costs for a dispensing facility also include accessibility program training for all patient-facing professions that work in that facility. This includes pharmacists, pharmacy technicians, and pharmacy assistants, and the annual cost is estimated by the following formula:

- Training cost per dispensing facility per year = # hours of training per year * [(average pharmacist wage * # of pharmacists) + (average pharmacy technician wage * # of pharmacy technicians) + (average pharmacy assistant wage + # of pharmacy assistants)]

The per person training costs for offices of dispensing practitioners is reported in SBEIS Table 2 and the per person training costs for dispensing facilities is reported in SBEIS Table 3. For example, a larger dispensing facility (i.e., pharmacy) with seven pharmacists, 16 pharmacy technicians, and two pharmacy assistants on staff would have approximately **\$1,778** in training costs each year, assuming staffing levels remain the same. This figure could act as a high-end cost estimation, but training costs incurred by dispensing facilities are dependent on the number of staff and distribution of profession types unique to each facility.

SBEIS Table 2. Average Wage Data and Training Costs, Offices of Dispensing Practitioners

Occupation	Average Hourly Wage*	Annual Training (2 Hours)
Physician	\$122	\$244
Dentist**	\$88	\$176
Podiatric Physician	\$94	\$186
Veterinarian	\$60	\$120
Nurse Practitioner	\$65	\$130
Optometrist	\$60	\$120
Physician assistant	\$70	\$140
Naturopath	\$46	\$92
Profession Assistant***	\$23	\$46

* The average hourly wage for practitioners—excluding dentists—is derived from the 2022 wage statistics reported by the U.S. Bureau of Labor and Statistics. Average hourly wages rounded up to the next whole number.²

** The average hourly wage for dentists is derived from the 2021 wage statistics reported by the U.S. Bureau of Labor and Statistics. Average hourly wage rounded up to the next whole number.³

*** The profession assistant category represents all non-practitioner employees in an office of a dispensing practitioner tasked with aiding in the provision of accessible labeling services.

SBEIS Table 3. Average Wage Data and Training Costs, Dispensing Facilities

Occupation	Average Hourly Wage*	Training Costs (2 Hours Annually)
Pharmacist	\$67	\$134
Pharmacy Technician	\$24	\$48
Pharmacy Assistant/ Pharmacy Aide	\$18	\$36

* Average hourly wage rounded up to the next whole number.

***NEW SECTION* WAC 246-945-028 Accessibility of prescription information for visually impaired or print disabled individuals.**

Description: WAC 246-945-028 focuses on providing means of access for patients who are visually impaired or print disabled. The prescription information that must be made accessible for such patients

is defined in WAC 246-945-026(9), containing information elements such as the name of the drug, name of the patient, drug quantity, and the complete directions for use.

Subsection (3) lists the means of access that may be provided for patients upon request. At least one, or a combination of one or more, of the following means of access are required and must be affixed to the prescription container in order to comply with the proposed rule:

- Printed text of a minimum 12-point font size;
- Printed text in Braille;
- A QR code or equivalent that can transmit prescription information to an external accessible device; and
- A prescription drug reader or equivalent device able to deliver the required information in an audio format for the patient.

Cost(s): *One-time costs:* Accessible labeling options for visually impaired or print disabled patients can be made available through one or more methods listed in subsection (3): Large print, Braille, a QR code or equivalent, and a prescription drug reader or equivalent device.

Printed text of a minimum 12-point font size or a QR code or equivalent that can transmit prescription information to an external accessible device: If providing large print or QR code options best fits a patient's needs, there are no expected one-time costs as those options could be provided through existing printing hardware. The department and commission reasonably believe that all entities have a printer already that can provide this functionality. Should a practitioner or facility choose to acquire a new printer capable of printing large print labels, the cost is estimated at **\$240** (minimum) or more⁴ but is excluded from this analysis.

Printed text in Braille: Providing Braille labels would likely require the acquisition of a printer capable of printing labels in Braille. Braille printers are classified as either "small-volume" or "high-volume" based on the number of labels that can be printed over a period of time. Small-volume printers are priced between **\$1,800** and **\$5,000** while high-volume printers range from **\$10,000** to **\$80,000**.⁵ For typical patient service, the commission and department do not expect that offices of dispensing practitioners or dispensing facilities would have a large enough patient population requiring Braille printing to justify the use of a high-volume printer. Therefore, the commission and department reasonably estimate a one-time cost for those that choose to provide Braille as an accessible labeling option would be between **\$1,800** and **\$5,000**.

Audio Labeling: The commission and department estimate one-time costs for providing audio labeling options such as a prescription reader or equivalent range between **\$700** and **\$4,000** based on estimates received directly from third party vendors Envision America, AccessaMed, and Spoken Rx.⁶ The costs are largely attributed to the acquisition of individual prescription readers by the practitioner or facility, which are then loaned to the patient at no additional charge.

It is possible that an office of a dispensing practitioner or dispensing facility could comply with the requirements established in WAC 246-945-028 at **no additional cost** provided they already have a printing system that can accommodate one or more methods listed in subsection (3). Pharmacy representatives relayed to commission staff that some pharmacies more commonly provide large-print, QR code, audio labeling services, or a combination of these services. Braille is the

least likely of the four, but it is possible to procure hardware to provide this option should the pharmacy choose to do so.

Recurrent/Ongoing costs: Any ongoing costs associated with WAC 246-945-028 come from the number of labels printed in the preferred accessibility method. The following costs would arise in addition to existing label printing costs, since the entity will also provide a prescription container label with standard formatting.

Service provider representatives provided an estimate of between **\$0.30** and **\$0.50** for each label requiring either large-print information as described in WAC 246-945-026(9) or a QR code. For Braille labels, printing each label would cost around **\$0.30** per label, with the price fluctuating depending on the volume printed per day. Lastly, prescription label information presented in an audio format would cost between **\$2.28** and **\$4.00** per label.⁷ The commission and department are **unable to estimate the total cost of accessible labeling to comply with the rule per entity** because the total is dependent on the volume of requests.

***NEW SECTION* WAC 246-945-029 Translation and interpretation for accessible prescription information for LEP individuals.**

Description: This section of rule establishes requirements for providing means of access for LEP patients when fulfilling prescriptions. Any language requested by the patient must be provided by the dispensing facility or office of the dispensing practitioner. The only element required for written translation is the complete directions for use, and the translated portion must be affixed to the prescription container per subsection (2).

Offices of dispensing practitioners and dispensing facilities must post signage developed and made available by the commission to notify individuals of the right to oral interpretation and written translation services. The signs will be translated in the ten most common written languages in Washington state and the commission will review the list of languages on the signs every five years. Signage developed and reviewed by the commission is exempt from analysis under RCW 34.06.328 (5)(b)(ii), as that rule relates only to internal government operations. Dispensing facilities and offices of dispensing practitioners that dispense and deliver prescriptions through the mail are required to provide notification to patients about the availability of accessibility services since the patient would not see a sign when interacting with that practitioner or facility.

Cost(s): Subsections (1) and (2) outline the necessity to provide the complete directions for use for a prescribed medication to an LEP patient upon request or if it is self-evident that the patient would require such accommodations. The signage requirement described in subsection (3) also represents a cost to the regulated entity, even though it is the commission's responsibility to create and update the sign template and to make it available to those entities (which is exempted from the analysis).

Offices of dispensing practitioners and dispensing facilities may utilize staff to provide interpretation services for patients, but those costs are included in the estimate for staff job functions described in the ongoing costs section for WAC 246-945-027. Translation and interpretation service costs mentioned below result from using third-party vendor services.

Recurrent/Ongoing costs: The commission takes responsibility for designing and updating the signage; the office of the dispensing practitioner or dispensing facility must print and conspicuously post the

sign at the location where patient interaction occurs. This cost could be as low as **\$0 or negligible** if the regulated entity already has printing capabilities for such signage and can absorb the single printing action as part of routine procedure. If the practitioner or facility chooses to use a professional printing service, the commission and department estimate costs ranging between **\$0.20**⁸ and **\$48.96**.⁹ The commission plans to review the list of languages every five years but could be more frequently if issues are brought to the commission's attention; therefore, this printing cost interval is unknown. Lastly, regulated entities might incur an ongoing cost for the signage requirement in WAC 246-945-029(3) should the commission need to update the accessibility sign template. Such costs would occur about once every five years, with the same expecting low-end printing cost of **\$0 or negligible** for offices and facilities capable of printing the sign in-house, with **\$48.96** as the high-end estimate for using an external printing service.

Translation services from third-party vendors are estimated using service price quotes from vendors for print translation ranging from **\$5/month** to **\$100/month**, depending on the volume of translations needed and the types of languages requested for translation.

For oral interpretation services, a third-party vendor representative provided an estimate for oral interpretation services provided via phone or video range from **\$89/month** (\$0.89 per minute for 100 minutes per month) to **\$6,250/month** (\$1.25 per minute for 5,000 minutes per month). Another third-party vendor quoted a rate of \$2.00 per minute for interpretation services but estimated only 2,000 minutes per month in the provision of those services which is why high-end estimate is based off a lower per minute rate. Overall, the price point depends on the number of patients requiring/requesting interpretation services but based on those conversations with third-party vendor representatives, it is expected that the ongoing cost for offices of dispensing practitioners and dispensing facilities will be closer to the low-end estimate.

Compliance Cost Determination: The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue. The compliance costs presented in this section are necessary for the implementation and maintenance of an accessible prescription labeling program. The probable one-time costs of the rule are developing P&P and purchasing accessible labeling hardware such as printers and audio prescription reader devices, and the probable ongoing costs are staff training, monthly third-party vendor fees, and per-label printing fees.

Because a major goal of the accessible labeling rules is to make accurate prescription information available to all patients, the commission and department determined that compliance costs associated with the program will not result in the loss of sales or revenue for businesses in the industry.

SBEIS - Section 4: Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated.

The proposed rule for accessible prescription labeling standards may impose costs **greater than** the minor cost thresholds. This determination was made based on total costs produced under different service volume scenarios (SBEIS Table 4) for the following entities:

Business Description/Minor Cost Threshold:

- Offices of physicians (except mental health specialists): \$11,302

- Dentist's office: \$4,060
- Podiatric physician's office: \$1,821
- Veterinarian's office: \$7,930
- Nurse practitioner's office: \$1,355
- Optometrist's office: \$3,004
- Physician assistant's office: \$1,355
- Naturopath's office: \$1,355
- Pharmacy: \$63,205

SBEIS Table 4. Total Estimated Cost of Compliance for Regulated Entities Using Service Volume Scenarios

Cost Categories	Regulated Entity	First Year Total Probable Cost to Comply with the Rule	Annual Total Probable Cost to Comply with the Rule after the First Year
Developing Policies and Procedures and Training	Office of Dispensing Practitioner	\$ 352 to \$934 (+ indeterminate training)	\$0 (+ indeterminate training)
Developing Policies and Procedures and Training	Dispensing Facility	\$381 to \$2,452	\$134 to \$1,778
Equipment Acquisition	Both	\$342 to \$10,174	\$0
Provision of Accessible Labels and Services (Scenario A)	Office of Dispensing Practitioner	\$0 - \$2,868	\$0 - \$2,868
Provision of Accessible Labels and Services (Scenario B)	Dispensing Facility	\$0 - \$172,650*	\$0 - \$172,650*
Total for an Office of a Dispensing Practitioner based on assumed scenario		\$694 to \$13,573 (+ indeterminate training)	\$134 to \$2,468 (+ indeterminate training)
Total for a Dispensing Facility based on assumed scenario		\$723 to \$183,758	\$0 to \$174,428

Summary of how costs were calculated: The department and commission separated the cost estimates into categories (equipment costs, costs for developing P&P and training, and costs based on volume of service) and are reflected below.

Costs for Developing PP and Training: SBEIS Table 5 reflects costs that the department and commission were able to estimate to comply with the rule for both the first year and subsequent years.

SBEIS Table 5. Elements, Assumptions, and Indeterminate Costs

Cost Elements/ Regulated Entity	Assumptions	First Year Total Probable Cost to Comply with the Rule	Annual Total Probable Cost to Comply with the Rule (after the First Year)
Developing policies and procedures/ office of a dispensing practitioner	<i>Low-end scenario:</i> Ten hours of assistant staff time and one hour of practitioner review time <i>High-end scenario:</i> Thirty hours of assistant staff time and two hours of practitioner review time	\$352 to \$934	\$0
Developing policies and procedures/ dispensing facility	<i>Low-end scenario:</i> Ten hours of assistant staff time and one hour of practitioner review time <i>High-end scenario:</i> Thirty hours of assistant staff time and two hours of practitioner review time	\$247 to \$674	\$0
Training/office of a dispensing practitioner	Unable to estimate training costs for offices because of the unknown variance in staff size and types of practitioner and non-practitioner professions working in the same office	Indeterminate	Indeterminate

Cost Elements/ Regulated Entity	Assumptions	First Year Total Probable Cost to Comply with the Rule	Annual Total Probable Cost to Comply with the Rule (after the First Year)
Training/dispensing facility	<i>Low-end scenario:</i> Annual staff training for one pharmacist <i>High-end scenario:</i> Annual staff training time per year for staff size of seven pharmacists, sixteen pharmacy technicians, and two pharmacy assistants	\$134 to \$1,778	\$134 to \$1,778
Total for an office of a dispensing practitioner		\$ 352 to \$934 (+ indeterminate)	\$0 (+ indeterminate)
Total for a dispensing facility		\$381 to \$2,452	\$134 to \$1,778

Limitations: For an office of a dispensing practitioner the commission and department were unable to determine training costs as it is not known how these offices are comprised between practitioner and nonpractitioner employees, as well as an accurate range in staff size. However, training costs, which each office of a dispensing practitioner can calculate using the provided formulas in SBEIS Section 3, do not affect exceeding respective minor cost thresholds because the department and commission have already anticipated that costs may be greater than the threshold.

The costs for dispensing facility training increase based on staff size. As explained in SBEIS Section 3, the higher-end costs are represented by a pharmacy with 25 people on staff: Seven pharmacists, 16 pharmacy technicians, and two pharmacy assistants. The lower-end costs are represented by a single pharmacist requiring training.

Equipment Acquisition Costs: The SBEIS Table 6 reflects costs that the department and commission were able to estimate to comply with the rule for both the first year and subsequent years.

SBEIS Table 6. Elements, Assumptions, and Costs

Cost Elements	Assumptions Used for Estimate	First Year Total Probable Cost to Comply with the Rule	Annual Total Probable Cost to Comply with the Rule (after the First Year)
Large-print or QR-code-capable printer	New purchase of hardware - if needed	\$0 to \$240	\$0
Braille printer	New purchase of hardware - if needed	\$0 to \$5,000	\$0
Prescription readers or audio devices	New purchase of hardware - if needed	\$0 to \$4,000	\$0
Total		\$0 to \$9,240*	\$0

* Total low-end cost estimate assumes the entity already has a printer capable of producing large-print or QR-code labels, a printer capable of producing Braille labels, or audio device readers on hand. The high-end estimate assumes the entity procures one of each hardware at the highest estimated rate.

Provision of Accessible Label and Service Costs based on Volume of Service: The expected number of patients requiring and requesting accessible labeling services differs for each entity, resulting in wide ranges for most cost estimates. For this reason, the commission and department used two scenarios, one for offices of dispensing practitioners and one for dispensing facilities, to better understand costs dependent on service volume.

Scenario A: Office of Dispensing Practitioner: In this scenario, it is assumed that an office of a dispensing practitioner would provide, at most, one accessible label a week (**52 labels per year**). For

this scenario, the estimated annual compliance costs for an office of a dispensing practitioner range from **\$0 and \$2,868** (SBEIS Table 7).

SBEIS Table 7. Scenario A: Elements, Assumptions and Costs for an Office of a Dispensing Practitioner

Cost Elements	Assumptions	First Year Total Probable Cost to Comply with the Rule	Annual Total Probable Cost to Comply with the Rule (after the First Year)
Provision of accessible label (including large-print, QR code, Braille, or audio reader)	52 labels per year (one label per week) at the highest rate of \$4 per audio label	\$0 to \$208	\$0 to \$208
Third-party translation services	52 labels per year (one label per week) at the highest rate of \$5 per audio label	\$0 to \$260	\$0 to \$260
Third-party interpretation services	Oral interpretation services at 1,200 minutes per year (100 minutes per month) at the highest rate of \$2 per minute	\$0 to \$2,400	\$0 to \$2,400
Total costs		\$0 to \$2,868*	\$0 to \$2,868*

* Total low-end cost estimate assumes no requests for accessible labeling or translation and interpretation. The high-end estimate assumes 52 labels at \$4 per label plus third-party translation and interpretation services.

Scenario B: Dispensing Facility: In this scenario, practitioners would provide **3,795 visually accessible labels and 7,494 translated labels per year**. Determining a realistic number of accessible labels produced by dispensing facilities for visually impaired, print disabled, and LEP patients is based on the number of prescriptions issued daily by a pharmacy and the proportion of the patient population that would need accessible labeling services. According to the Centers for Disease Control and Prevention (CDC), approximately four percent of Washington residents have some form of vision impairment¹⁰ and the Migration Policy Institute estimates that 7.9 percent of Washington residents are LEP individuals.¹¹ Per a 2021 estimate from the National Community Pharmacists Association, pharmacies have an average prescription volume of 63,228 prescriptions per store.¹² This means that, on average, about 2,530 labels could be produced annually for visually impaired patients and about 4,996 labels for LEP patients. The commission estimates that the highest expected volume could be 50 percent above the reported average, meaning that top-end volume would be 3,795 visually accessible labels and 7,494 translated labels per year.

For this scenario, the estimated annual compliance costs for a dispensing facility ranges from **\$0 and \$172,650** (SBEIS Table 8).

SBEIS Table 8. Scenario B: Elements, Assumptions, and Costs for a Dispensing Facility

Cost Elements	Assumptions	First Year Total Probable Cost to Comply with the Rule	Annual Total Probable Cost to Comply with the Rule (after the First Year)
Provision of accessible label (including large-print, QR code, Braille, or audio reader)	3,795 labels per year at the highest rate of \$4 per audio label	\$0 to \$15,180	\$0 to \$15,180
Third-party translation services	7,494 labels at the highest rate of \$5 per label	\$0 to \$37,470	\$0 to \$37,470

Cost Elements	Assumptions	First Year Total Probable Cost to Comply with the Rule	Annual Total Probable Cost to Comply with the Rule (after the First Year)
Third-party interpretation services	Oral interpretation services at 60,000 minutes per year (5,000 minutes per month) at the highest rate of \$2 per minute	\$0 to \$120,000	\$0 to \$120,000
Total costs		\$0 to \$172,650*	\$0 to \$172,650*

* Total low-end cost estimate assumes no requests for accessible labeling or translation and interpretation services. The high-end estimate assumes 3,795 labels at \$4 per label plus third-party translation for 7,494 labels at \$5 per label and interpretation services at 60,000 minutes per year at \$2 per minute.

Overall Limitations: Dispensing facilities could receive multiple requests for accessible labeling services daily, bringing up costs pertaining to per-label printing or third-party translation or interpretation vendor services. However, offices of dispensing practitioners could provide far fewer such labels directly to patients because the prescriptions they issue are typically sent to and filled by a dispensing facility.

Third-party vendor costs for interpretation and translation services could exceed the cost estimates per year if the practitioner used a higher per minute rate from the third-party vendor.

SBEIS - Section 5: Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: Yes, the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

SBEIS - Section 6: Explanation of the determination: The proposed accessible labeling rules apply to all offices of dispensing practitioners and dispensing facilities operating in the state of Washington and contain multiple compliance elements that represent costs to those entities. Rules of this type, broad application and complex compliance elements, tend to be regressive in nature, meaning that more obstacles exist for smaller businesses to comply with and implement the rules.

For example, developing P&P would represent a similar cost range to all facilities and offices of practitioners regardless of their respective office or business's staff size or revenue. The department and commission expect both smaller and larger business to take 10 to 30 hours to complete the P&P. It is also likely that larger businesses already have some or all of the hardware required to provide accessible labels to visually impaired or print disabled patients.

1. Reducing, modifying, or eliminating substantive regulatory requirements: The regulatory requirements for the accessible labeling rules cannot be reduced, modified, or eliminated for the entities to which the regulations apply because the requirements are necessary to provide meaningful access to all patients receiving prescribed medications.

2. Simplifying, reducing, or eliminating recordkeeping and reporting requirements: No additional recordkeeping or reporting requirements are described in the rule language.

3. Reducing the frequency of inspections: There are no plans to change the frequency of inspections.

4. Delaying compliance timetables: The commission plans to delay implementation for small businesses and other entities required to comply at least several months. Although the commission will not vote

on the implementation date until the CR-103 is authorized, they have expressed the intent to delay implementation for at least 12-18 months.

5. Reducing or modifying fine schedules for noncompliance: No new fines for noncompliance are added to the existing fining structure.

6. Any other mitigation techniques including those suggested by small businesses or small business advocates: Offices of dispensing practitioners and dispensing facilities have a number of options to reduce or mitigate the necessary compliance costs associated with the accessible labeling rules. The estimate examples provided in Section 4 of this document represent the highest-end of potential costs that regulated entities could incur. The mitigation strategies below are organized by the cost elements in each section of the rule language.

- Developing P&P
 - The cost range for developing P&P for each entity mostly depends on the time needed by staff to write and review the necessary documents. Development time could be around 10 hours or less, about a third of the high-end time estimated by staff, depending on the familiarity of the facility's or practitioner's respective business or office with developing P&P, as well as the complexity of the entity's internal operating structure.
- Staff training time (two hours per person annually)
 - The amount of time needed from each staff member to receive accessibility program training is not expected to change year-over-year, though training costs would be lower for regulated offices and businesses with smaller staff sizes.
- Visual accessibility hardware acquisition
 - Per WAC 246-945-028(3), a dispensing facility or office of a dispensing practitioner "shall provide one, or a combination" of the visual accessibility methods listed in rule: Large-print labels, Braille labels, QR codes, and prescription readers (audio devices). This means that a regulated entity may only need to acquire the hardware and pay the per-label printing costs for one of the four methods, provided the entity is able to provide accurate prescription information for their patient population.
- Large-print or QR-code-capable printer (if needed)
 - Costs could be mitigated in the acquisition of a large-print-capable printer by purchasing a lower cost device. Costs could also be negated entirely for entities that already have the capability to provide large-print labels or QR codes that link to the patient's prescription information.
- Braille printer (if needed)
 - Costs could be mitigated in the acquisition of a Braille printer by purchasing a lower cost device (around \$1,800 as opposed to the higher cost range of around \$5,000). Costs could also be negated entirely for entities that already have the capability to provide Braille labels.
- Prescription readers/audio devices (if needed)
 - The acquisition cost for prescription readers depends on both the cost of each device and the number of devices needed to serve the patient population. It is likely that smaller businesses or businesses with fewer patients needing accessible labeling services would not need to invest in as

many prescription readers as larger businesses. Costs could also be negated entirely for entities that already have the capability to provide prescription readers to their patient population.

- Visual accessibility printing
 - The per-label printing costs for the visual accessibility service tools listed in WAC 246-945-028(3) can be reduced through at least two methods. The first method is using same-type hardware (e.g., selecting one Braille printer over another) that can print accessible labels at a lower per-label cost, and the second method is to use an accessibility service tool, such as a large-print label instead of a prescription reader, that features lower per-label costs.
 - It is also important to note that, while the cost estimates discussed in Section 4 of this document estimate the number of accessible labels a dispensing facility might expect to produce each year, that number could be lower based on patient population size and the number of patients that ask for accessible labels for their medications. Not all visually impaired, print disabled, or LEP patients are expected to utilize the accessibility services, though it must be clear to each patient that such services are available.
- Third-party translation services for LEP patients
 - The label translation services provided by third-party vendors have no start-up costs, per staff discussion with vendor representatives. All associated costs are through monthly service fees, and costs could be mitigated through the use of certain vendors.
- Third-party interpretation services for LEP patients
 - Oral interpretation service costs are also expressed via monthly service fees, and costs could be mitigated through the use of certain vendors. Some vendors reported their monthly fees being based on interpretation fees between \$0.89 and \$2.00 per minute, meaning that costs to the regulated entity could be further reduced based on patient need.

In conclusion, department and commission staff believe that many options exist for small businesses to reduce accessibility program implementation costs while still complying with the accessible labeling rules and serving the needs of their patient community.

SBEIS - Section 7: Description of how small businesses were involved in the development of the proposed rule: Commission staff created and maintained a list of interested parties at the start of the CR-101 rule-making process and sent alerts to interested parties and licensees with any updates pertaining to listening sessions, draft outline workshops, and rule language workshops conducted at the commission's public meetings. The commission solicited and received feedback at these meetings from both small businesses that would be regulated by the proposed rules and representatives for small businesses such as the Washington state pharmacy association. The feedback received from small businesses helped in the formulation and editing of rule language drafts, such as adjusting defined terms and developing a list of medications that would be exempt from the accessibility rules.

An organization focused on language access invited commission staff to present on the accessible labeling rules project at one of their meetings. Attending staff discussed the scope of the proposed

rules and provided an overview of the rule-making process for those in attendance.

The commission also distributed a survey to all pharmacist licensees, many of whom worked in small businesses, in 2022 for the purpose of assessing the challenges and opportunities present in designing and tailoring an accessibility program with which dispensing facilities could comply. The data collected from this survey helped guide a draft outline for the accessible labeling program and eventual draft language.

SBEIS - Section 8: The estimated number of jobs that will be created or lost in result of the compliance with the proposed rule: Commission and department staff do not believe that compliance with the proposed rule will result in the creation or loss of any jobs associated with offices of dispensing practitioners and dispensing facilities.

- 1 The average assistant profession wage is based on an average of four assistant professions—pharmacy technicians, pharmacy aides, medical assistants, and medical secretaries/administrative assistants—from the 2022 wage statistics reported by the U.S. Bureau of Labor and Statistics. The average wage is rounded up to the next dollar.
- 2 Washington - May 2022 OEWS State Occupational Employment and Wage Estimates (bls.gov)
- 3 Washington - May 2021 OEWS State Occupational Employment and Wage Estimates (bls.gov)
- 4 U-LINE. (2023). Dymo Labelwriter 400 Series Printers. https://www.uline.com/BL_8650/Dymo-LabelWriter-400-Series-Printers?keywords=printer
- 5 American Foundation for the Blind. (Accessed October 2023). Braille Printers. <https://www.afb.org/blindness-and-low-vision/using-technology/assistive-technology-products/braille-printers>
- 6 American Foundation for the Blind. (Accessed October 2023). An In-Depth Look at the ScripTalk Station from En-Vision America. <https://www.afb.org/aw/14/6/15685>
- 7 Consultation with service provider representatives (August 2023).
- 8 Staples. (2023). Document Printing. <https://www.staples.com/services/printing/copies-documents-printing/>
- 9 Minuteman Press. (2023). Posters. <https://minuteman.com/us/products/signs/posters?location=wa,chehalis>
- 10 Centers for Disease Control and Prevention. (May 12 2023). Disability & Health U.S. State Profile Data for Washington (Adults 18+ years of age). Disability & Health U.S. State Profile Data: Washington | CDC
- 11 Migration Policy Institute. (2023). State Immigration Data Profiles - Washington. State Demographics Data | migrationpolicy.org
- 12 National Community Pharmacists Association (2022). NCPA Releases 2022 Digest Report. NCPA Releases 2022 Digest Report | NCPA

A copy of the statement may be obtained by contacting Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

August 13, 2024
Hawkins Defrance, PharmD, Chair
Pharmacy Quality Assurance Commission

OTS-5127.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-015 Minimum requirements for dispensing practitioners. (1) A practitioner authorized to prescribe or administer a legend drug including a controlled substance, other than a pharmacy, ~~((ean))~~ may dispense a legend drug including a controlled substance directly to an ultimate user without a prescription.

(2) All practitioners authorized to prescribe legend drugs and who dispense ~~((legend))~~ drugs or devices directly to the ultimate user, shall affix a label to the prescription container that meets the requirements of RCW 69.41.050 and shall comply with WAC 246-945-026 through 246-945-029.

NEW SECTION

WAC 246-945-026 Accessible prescription information—Definitions. Unless the context clearly requires otherwise, the following definitions, as well as the definitions in WAC 246-945-001, apply for the purposes of WAC 246-945-026 through 246-945-029:

(1) "Accessible prescription information" means the provision of accurate prescription information to a visually impaired or print disabled individual, and means the provision of accurate complete directions for use to an LEP individual.

(2) "Complete directions for use" means standard instructions intended to guide a patient on how to safely and effectively use a dispensed prescription. Minimum elements include:

(a) The verb such as, but not limited to, take, place, instill;

(b) The dosage form such as, but not limited to, tablet, capsule, and drops;

(c) Dosage quantity;

(d) Route of administration;

(e) Frequency of administration; and

(f) Additional contextual information for the safe and effective use of a dispensed prescription such as, but not limited to, "as needed," and "when tired."

(3) "Dispensing facility" or "dispensing facilities" means a pharmacy, nonresident pharmacy, healthcare entity, or hospital pharmacy associated clinic that dispenses and delivers prescriptions to the ultimate user or the ultimate user's authorized representative. It does not include prescriptions dispensed by a pharmacy, nonresident pharmacy, healthcare entity, and hospital pharmacy associated clinic that are administered by a licensed healthcare professional acting within their scope of practice.

(4) "Dispensing practitioner" or "dispensing practitioners" means a practitioner authorized to prescribe legend drugs and who dispenses and delivers prescriptions directly to the ultimate user or the ultimate user's authorized representative.

(5) "External accessible device" means a commercially available computer, mobile phone, or other communications device that is able to receive electronic information transmitted from an external source and provide the electronic information in a form and format accessible to the individual.

(6) "Limited-English proficient individual" or "LEP individual" means a person who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English.

(7) "Means of access" means provision of a mechanism to enable a visually impaired or print disabled individual to receive accurate prescription information.

(8) "Oral interpretation" means oral communication in which a person acting as an interpreter comprehends a message and re-expresses all necessary information accurately in the LEP individual's preferred language.

(9) "Prescription information" means drug or device name, patient name, patient species if applicable, complete directions for use, and drug quantity.

(10) "Prescription drug reader" means a device that provides information in an audio format accessible to the individual.

(11) "Print disabled" means the inability to effectively read or access prescription information due to a visual, physical, perceptual, cognitive disability, or other impairment.

(12) "QR code" means a two-dimensional barcode printed as a square pattern of black and white squares that encodes data.

(13) "Translation" shall mean the accurate conversion of a written text from one language into an equivalent written text in another language.

(14) "Visually impaired" means an impairment that prevents an individual from effectively reading or accessing information, such as prescription information, without assistance.

NEW SECTION

WAC 246-945-027 Accessible prescription information. (1) Dispensing facilities and dispensing practitioners shall comply with the requirements in WAC 246-945-027 through 246-945-029 to provide accessible prescription information unless the prescription is for:

(a) A prepackaged medication delivered pursuant to WAC 246-945-435;

(b) An opioid overdose reversal medication as defined in RCW 69.41.095;

(c) A multiple dose drug or device dispensed and partially administered to an individual by a healthcare professional acting within their scope of practice and subsequently relabeled for that individual's use; or

(d) A drug sample, as defined in RCW 69.45.010, delivered to an individual no more than twice within a 60-day period by the same dispensing practitioner or dispensing facility.

(2) Dispensing facilities and dispensing practitioners shall develop and implement policies and procedures to implement the requirements in WAC 246-945-027 through 246-945-029.

(3) Dispensing facilities and dispensing practitioners shall provide accessible prescription information as required in WAC 246-945-027 through 246-945-029 at no additional cost.

(4) The services required by WAC 246-945-027 through 246-945-029 may be provided by an employee of the dispensing facility or dispensing practitioner, the dispensing practitioner themselves, or a third party. The use of a third party does not diminish the responsibility of the dispensing facility or dispensing practitioner to comply with the requirements in WAC 246-945-027 through 246-945-029.

(5) The provision of accessible prescription information, as required by WAC 246-945-027 through 246-945-029, shall occur at the time of delivery of the filled prescription to the individual or the individual's authorized representative, but need not be provided in-person.

(6) Nothing in this section shall diminish or impair any requirement that a dispensing facility or dispensing practitioner provide any accessibility service, language assistance, interpretation, or translation under applicable federal or state law, such as, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), and Title III of the American with Disabilities Act (42 U.S.C. §§ 12181 to 12189, 28 C.F.R. Part 36).

NEW SECTION

WAC 246-945-028 Accessibility of prescription information for visually impaired or print disabled individuals. (1) Every dispensing facility and dispensing practitioner shall provide a means of access to prescription information, as defined in WAC 246-945-026(7), to visually impaired or print disabled individuals upon the request of the visually impaired or print disabled individual, their prescriber, or their authorized representative.

(2) Every dispensing facility and dispensing practitioner shall offer to provide a means of access to prescription information, as defined in WAC 246-945-026(7), to visually impaired or print disabled individuals when it is self-evident the person to whom the prescription is being prescribed and delivered is visually impaired or print disabled.

(3) A dispensing facility or dispensing practitioner shall provide one, or a combination, of the following means of access for visually impaired or print disabled individuals upon the request of the visually impaired or print disabled individual, their prescriber, or their authorized representative:

(a) Printed prescription information, as defined in WAC 246-945-026(9), in a minimum of 12-point font size, which is affixed to the prescription container;

(b) Prescription information, as defined in WAC 246-945-026(9), in Braille affixed to the prescription container;

(c) A QR code, or equivalent, affixed to the prescription drug container that transmits prescription information, as defined in WAC 246-945-026(9), to an individual's external accessible device; or

(d) A prescription drug reader, or equivalent, that is able to obtain prescription information, as defined in WAC 246-945-026(9), from the label affixed to the prescription container and provide the prescription information, as defined in WAC 246-945-026(9), in an audio format accessible to the individual.

(4) When dispensing facilities or dispensing practitioners provide prescription information, as defined in WAC 246-945-026(9), in one or more accessible means to visually impaired or print disabled individuals, the dispensing facility or dispensing practitioner must still affix their standard label to the prescription drug container that meets the requirements of WAC 246-945-015 for dispensing practitioners or WAC 246-945-016 for dispensing facilities.

NEW SECTION

WAC 246-945-029 Translation and interpretation for prescription information for LEP individuals. (1) Every dispensing facility and dispensing practitioner shall provide oral interpretation and written translation services of the complete directions for use to LEP individuals upon the request of the LEP individual, their prescriber, or their authorized representative. The translated complete directions for use must be affixed to the prescription container.

(2) Every dispensing facility and dispensing practitioner shall offer to provide oral interpretation and written translation services of the complete directions for use to LEP individuals when it is self-evident the person to whom the prescription is being prescribed or de-

livered is an LEP individual. The complete directions for use must be affixed to the prescription container.

(3) Dispensing facilities and dispensing practitioners who dispense and deliver prescriptions at a fixed physical location shall, at a minimum, conspicuously display a sign developed and made available by the commission that notifies individuals of the right to oral interpretation and written translation services of the complete directions of use.

(a) When creating the sign, the commission will include the 10 most common languages in Washington based on the Washington state office of financial management's (OFM) LEP estimates.

(b) The commission shall review the OFM LEP estimates report once every five years to evaluate whether there has been a change to the 10 most common languages in Washington based on this data. During this review, the commission will determine whether other resources or methodologies provide more accurate LEP estimate information to determine the list of languages included on the sign.

(4) Dispensing facilities and dispensing practitioners who dispense and deliver prescriptions through the mail shall notify individuals of the individual's right to oral interpretation and written translation services of the complete directions for use when delivering the individual's medication. The commission will develop and make available the notification that dispensing facilities and dispensing practitioners will provide.

(a) When creating the notification, the commission will include the 10 most common languages based on the Washington state office of financial management's (OFM) LEP estimates.

(b) The commission shall review the OFM LEP estimates report once every five years to evaluate whether there has been a change to the 10 most common languages in Washington based on this data. During this review, the commission will determine whether other resources or methodologies provide more accurate LEP estimate information to determine the list of languages included on the notification.

(5) Dispensing practitioners and dispensing facilities must still affix a label that meets the requirements of WAC 246-945-015 for dispensing practitioners or WAC 246-945-016 for dispensing facilities in English when providing written translation services of the complete directions for use to LEP individuals.

WSR 24-17-051
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed August 14, 2024, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-06-079.

Title of Rule and Other Identifying Information: Rule making to amend WAC 314-55-096 concerning vendor, educational, and internal quality samples.

Hearing Location(s): On September 25, 2024, at 10:00 a.m. All public liquor and cannabis board (board) activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom headquarters building at 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance and the public may also log in using a computer or a device, or call in using a phone to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit [https://lcb.wa.gov/Boardmeetings/Boardmeetings/](https://lcb.wa.gov/Boardmeetings/Boardmeetings)

Date of Intended Adoption: No earlier than October 9, 2024.

Submit Written Comments to: Cassidy West, Policy and Rules Manager, P.O. Box 48030, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, beginning August 14, 2024, 12:00 p.m., by September 25, 2024, 12:00 p.m.

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 September 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal aims to amend the regulations regarding vendor, educational, and internal quality samples in WAC 314-55-096 to streamline requirements, reduce the regulatory burden on licensees, and ensure accountability and public safety. The proposed changes are expected to improve efficiency in cannabis sampling processes while maintaining high standards for public safety and product quality. Key changes being proposed are outlined below:

1. **Unified Sample Category - "Trade Samples":** This category merges vendor and educational samples to reduce regulatory complexity and better align with industry practices.

2. **Representative Sample Sizes:** Ensures that trade samples reflect the smallest marketable product size to accurately represent consumer products, aiding in more informed business decisions.

3. **Quarterly Provision Limits:** Transitioning to quarterly limits accommodates the operational cycles of producers, particularly those with seasonal outdoor production schedules.

4. **Equivalency Standards for Different Product Types:** Standard limits across various product types ensure fair and consistent sampling practices.

5. **Traceability and Recordkeeping:** All trade samples must be documented in the state's traceability system, including detailed re-

cords of product type, trade name, and the receiving licensee. This ensures transparency and facilitates compliance monitoring.

6. **Designated Storage Areas:** Trade samples must be stored in designated areas separate from nonsample inventory. This separation is crucial for preventing contamination and ensuring samples are easily identifiable for audit and compliance checks.

7. **Employee Sampling:** Employees of licensees can receive up to 15 trade sample units per calendar quarter. These samples must be used strictly for educational purposes and are not to be used as compensation or incentives.

8. **Limits on Sample Distribution:** Producers can distribute up to 96 trade sample units of cannabis per calendar quarter to processors, allowing comprehensive product assessment. Processors may provide up to 120 trade sample units of various cannabis products to retailers per quarter, facilitating extensive staff training and product familiarization.

9. **Sample Jar Modifications:** Changes include requirements for sample jars to be transparent, allowing customers to view and smell the product. This modification enhances consumer interaction with the product without compromising safety. The proposal also changes requirements for handling useable cannabis when it is no longer needed on display in the sample jar. The rule proposes two additional options for retailers: (1) To give the useable cannabis to current employees, which will count towards the employee's allotment; and (2) to dispose the cannabis in accordance with the requirements in WAC 314-55-097. These options are in addition to retailers transferring the cannabis back to the originating processor who provided it, as outlined in the existing rule.

The proposed changes are designed to offer multiple benefits, including, but not limited to:

1. Simplified compliance with standardized sample sizes and reduced administrative burden and overhead costs.

2. Enhanced understanding and education of budtenders regarding cannabis products.

3. More practical and efficient sampling processes that reflect operational realities of the cannabis industry.

Reasons Supporting Proposal: Rule making is needed to update the sampling framework to reflect current industry practices and reduce regulatory burdens while ensuring accountability and public safety. The proposed rule aims to align the sampling regulations more closely with industry realities and operational needs.

Statutory Authority for Adoption: RCW 69.50.342.

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: The proposed changes reflect input from various stakeholders, including industry members and public health partners, seeking to balance business needs with public health concerns.

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Cassidy West, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98504, 360-878-4235; Implementation and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753, 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. The subject of the proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328 (5) (c).

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance.

While the proposed rule simplifies some aspects, such as eliminating the need for special sample unit sizes, they introduce costs related to additional labeling, storage, and enhanced recordkeeping requirements. These costs may be partly offset by the elimination of the need for special sample sizes and the simplification of product tracking. Additionally, there may be costs associated with destroying existing sample units that do not comply with new rules, once effective. A transition period of six months will be provided to adjust to the new regulations, helping to mitigate potential financial impacts on businesses.

Using United States Census North American Industry Classification System (NAICS) code 111918 for cannabis grown in an open field, NAICS describes this code for "This U.S. industry comprises establishments primarily engaged in one of the following: (1) Growing crops (except oilseeds and/or grains; vegetables and/or melons; fruits and/or tree nuts; greenhouse, nursery, and/or floriculture products; tobacco; cotton; sugarcane; hay; sugar beets; or peanuts); (2) growing a combination of crops (except a combination of oilseed(s) and grain(s); and a combination of fruit(s) and tree nut(s)) with no one crop or family of crops accounting for one-half of the establishment's agricultural production (i.e., value of crops for market); or (3) gathering tea or maple sap." The NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=111998> identifies cannabis grown in an open field as an example of a business that uses this code.

Using NAICS code 424590 for cannabis merchant wholesalers, NAICS describes this code for "This industry comprises establishments primarily engaged in the merchant wholesale distribution of farm products (except grain and field beans, livestock, raw milk, live poultry, and fresh fruits and vegetables)." The NAICS code description at <https://www.census.gov/naics/?input=cannabis&year=2022&details=424590> identifies cannabis merchant wholesalers as an example of a business that uses this code.

The liquor and cannabis board (LCB) applied NAICS codes 453998 for marijuana stores. The industry descriptions for 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>.

LCB 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). Per RCW 19.85.020(2), a minor cost means a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.

According to department of revenue data from 2023, the total gross business income for NAICS code 459991 was \$647,617,610 for 493 businesses. That produces an average annual gross business income of \$1,313,625.98. Three-tenths of one percent of \$1,313,625.98 is \$3,940.877, rounding up to \$3,940.88.

The remainder of the data is provided by reference to the minor-cost threshold calculator provided by the office of regulatory innovation and assistance available at https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/Minor-Cost-Threshold-Calculator.xlsx.

2022 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
111419	\$500.00	Cannabis, grown under cover	Other Food Crops Grown Under Cover	\$3,259.51	\$3,259.51 2021 Dataset pulled from ESD	\$3,195.50 2021 Dataset pulled from DOR
111998	\$500.00	Cannabis, grown in an open field	All Other Miscellaneous Crop Farming	\$11,775.64	\$11,775.64 2021 Dataset pulled from ESD	\$2,882.31 2021 Dataset pulled from DOR
424590	\$500.00	Cannabis merchant wholesalers	Other Farm Product Raw Material Merchant Wholesalers	\$8,809.55	\$3,948.77 2021 Dataset pulled from ESD	\$8,809.55 2021 Dataset pulled from DOR
459991	\$500.00	Marijuana stores, recreational or medical	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers	\$3,940.88	Unavailable*	\$3,940.88 2023 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the threshold for any of the potential NAICS codes applicable to cannabis licensees. Therefore, implementation of this amended rule is not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

A copy of the detailed cost calculations may be obtained by contacting Cassidy West, 1025 Union Avenue, Olympia, WA 98504, phone 360-878-4235, fax 360-704-5027, TTY 711 or 1-800-833-6388, email rules@lcb.wa.gov.

August 14, 2024
David Postman
Chair

OTS-5756.1

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-096 ((Vendor, educational)) Trade samples, retail display samples, and internal quality control samples. (1) **((Vendor)) Trade samples:** ((Producers or processors may provide free)) Trade samples are samples of useable cannabis, cannabis-infused products, and cannabis concentrates ((to negotiate)), as described in this section, provided for free for the purpose of negotiating a sale and providing education to budtenders engaged in selling cannabis products at retail.

(a) Trade samples may be provided by a producer to a processor, or by a processor to a retailer.

(b) Trade samples must be provided free of charge to the receiving licensee.

(c) Trade samples may only be provided to a licensee that has requested the trade sample or is consenting to receiving the trade sample.

(d) Trade samples may be used for:

(i) Negotiating a sale on product ((the retail licensee does not currently carry. All vendor sample limits are)) not currently carried by the cannabis licensee;

(ii) Educating budtenders on new products the cannabis retailer has not previously offered for sale to the public; and

(iii) Educating new budtenders on existing products the retailer sells.

(e) A trade sample unit must:

(i) Be representative of the product being offered for sale on the market;

(ii) Not be larger than the smallest unit offered for individual sale at retail;

(iii) Not exceed the following amounts per unit:

(A) 3.5 grams of cannabis;

(B) One gram of cannabis concentrate;

(C) 100 milligrams of cannabis-infused product in solid or liquid form meant to be ingested orally, applied topically, or otherwise taken into the body containing not more than 10 milligrams of active delta-9 THC per serving consistent with the limits provided in WAC 314-55-095.

(f) The limits on the amount of trade samples offered to cannabis licensees are based on calendar ((months)) quarters.

(i) Producers may not provide any one licensed processor more than 96 trade sample units of cannabis flower per calendar quarter.

(ii) Processors may not provide any one licensed retail business more than 120 trade sample units of any combination of useable cannabis, cannabis concentrates, or cannabis-infused products per calendar quarter.

(g) The producer or processor must:

(i) Record the amount of each ((vendor)) trade sample provided by product type and the ((processor or retailer receiving the sample)) trade name of the receiving licensee in the state's traceability system((The outgoing sample must be clearly labeled));

(ii) Clearly label each outgoing sample as a "((vendor)) trade sample" ((to negotiate a sale and recorded)) and itemize trade samples on a separate transport manifest from products intended for resale;

All trade samples must be packaged and labeled in accordance with the requirements in WAC 314-55-105, and include an additional label affixed to the package with the following statement in a style or type of lettering that is bold, clear, and conspicuous when compared with other type, lettering or graphics, and does not obscure other required labeling information: "TRADE SAMPLE - NOT FOR RESALE OR DONATION."

(iii) Locate and store all trade samples in a designated area on the licensed premises, separate from nonsample products being sold to another licensee;

(iv) Not provide trade samples as a condition for a retailer to purchase the producer or processor's products or in any manner that would cause undue influence over another licensee or industry member;

(v) Provide the license receiving trade samples of cannabis with the certificate of analysis for all quality assurance and quality control tests conducted on the lot or batch from which the sample was derived;

(vi) Disclose all chemicals applied to the growing medium and the plants during production and or processing as applicable including, but not limited to, pesticides, fungicides, herbicides, rodenticides, nutrients, fertilizers, and pH control; and

(vii) Disclose all solvents and other chemicals, that were used during the processing of a cannabis concentrate or cannabis-infused product including, but not limited to, additives and ingredients.

(h) The receiving licensee must receive the ((vendor)) trade sample in the traceability system prior to sampling.

~~((a) Vendor))~~ (i) Trade samples may only be given to and used by licensees or current paid employees of ((licensees who have product ordering authority or employees who provide input on product to licensees or employees of licensees who have purchasing authority to inform purchasing decisions)) the licensee as detailed in a licensee's written business policy.

~~((b) Producers may not provide any one licensed processor more than eight grams of cannabis flower per month free of charge for the purpose of negotiating a sale.~~

~~(c) Processors may not provide any one licensed retailer more than eight grams of useable cannabis per month free of charge for the purpose of negotiating a sale.~~

~~(d) Processors may not provide any one licensed retailer more than eight units of cannabis-infused products in solid form meant to be ingested orally or otherwise taken into the body per month free of charge for the purpose of negotiating a sale. No single unit may exceed 10 mg of THC.~~

~~(e) Processors may not provide any one licensed retailer more than eight units of cannabis-infused product in liquid form meant to be eaten, swallowed, or otherwise taken into the body per month free of charge for the purpose of negotiating a sale. No single unit may exceed 10 mg of THC.~~

~~(f) Processors may not provide any one licensed retailer more than eight units of cannabis-infused products meant to be applied topically per month free of charge for the purpose of negotiating a sale.~~

~~(g) Processors may not provide any one licensed retailer more than two units of cannabis-infused extract meant for inhalation or infused cannabis mix per month free of charge for the purpose of negotiating a sale. No single unit may exceed 0.5 g.~~

~~(h) A cannabis producer must make quality assurance test results available to any processor receiving samples to negotiate a sale. The producer must also provide a statement that discloses all pesticides applied to the cannabis plants and growing medium during production.~~

~~(i) A cannabis processor must make quality assurance test results available to any retailer receiving samples to negotiate a sale. If a cannabis extract was added to the product, the processors must disclose the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract.~~

~~(j) **Vendor sample labeling:** All vendor samples must be clearly labeled as a vendor sample and meet all labeling requirements of the product to be sampled.~~

~~(i) The unique identifier number generated by the traceability system;~~

~~(ii) The UBI number of the licensed entity providing the sample; and~~

~~(iii) Weight of the product in ounces and grams or volume as applicable.~~

~~(2) **Education sampling.** Processors)) (i) Trade samples may not be sold, and only be given free of charge to paid employees of the licensed business.~~

~~(ii) Trade samples may not be provided as employee compensation, as an incentive, or reward.~~

~~(j) Cannabis retailers:~~

~~(i) Must not require a producer or processor to provide free trade samples as a condition for purchasing a licensee's products or in any manner that would cause undue influence over another licensee or industry member.~~

~~(ii) Must locate trade samples in a designated area on the licensed premises, separate from nonsample products for resale, and be clearly identified as trade samples.~~

~~(iii) May provide free trade samples of useable cannabis, cannabis-infused products, and cannabis concentrates to ((retail licensees to give to the licensee's)) current paid employees ((for educational purposes. Products being sampled must be carried by)) of the licensed retailer. ((The processor))~~

~~(iv) Must track all incoming and outgoing trade sample inventory in the state traceability system by product type.~~

~~(v) Must record the sample amount ((of each sample and the retailer receiving the sample)) being provided to each employee in the traceability system including the product type and the name of the employee receiving the sample. ((The outgoing sample must be clearly labeled as "education sample" and recorded on a transport manifest. Once the retailer receives the))~~

~~(vi) Must not provide more than 15 sample((, the retailer must accept the sample in the traceability system prior to distributing samples to the retailer's employees. All employees at a licensed retail location who receive educational samples must be entered into the traceability system for the purpose of distributing education samples.~~

~~(a) Retailers are restricted to receiving a maximum of 100 sample units per calendar month. No more than 10 sample units may be provided to any one employee per calendar month.~~

~~(b) The maximum size of education samples are:~~

~~(i) Useable cannabis, cannabis mix, and infused cannabis mix — One unit not to exceed 0.5 g.~~

~~(ii) Cannabis infused solid or liquid product meant to be ingested orally or otherwise taken into the body — One unit not to exceed 10 mg THC.~~

~~(iii) Cannabis-infused extract for inhalation — One unit not to exceed 0.25 g.~~

~~(iv) Cannabis-infused products for topical application — One unit not to exceed 16 ounces.~~

~~(c) Distribution and consumption of all educational samples is limited to retail employees who directly sell product to retail customers. Retail employees who are not involved in direct sales to customers are not eligible for education samples.~~

~~(d) Cannabis retail licensees are prohibited from providing educational samples to their employees as a form of compensation.~~

~~(e) A cannabis processor must make quality assurance test results available to any retailer receiving education samples. If a cannabis extract was added to the product, the processors must disclose the~~

~~type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract.~~

~~(f) **Education sample labeling:** All education samples must be clearly labeled "education sample" and include the following information on the label:~~

~~(i) The unique identifier number generated by the traceability system;~~

~~(ii) The UBI number and trade name of the licensed entity providing the sample;~~

~~(iii) Product name or strain name for useable cannabis;~~

~~(iv) Weight of the product in ounces and grams or volume as applicable; and~~

~~(v) Potency labeled as required under WAC 314-55-105.~~

~~(3) A cannabis processor is not required to provide free samples to negotiate a sale or educational samples to a cannabis retail licensee, and a cannabis retail licensee may not require a cannabis processor to provide free sample to negotiate a sale or educational samples as a condition for purchasing the cannabis processor's products.~~

~~(4)) units to any one employee within a calendar quarter.~~

~~(2) Retailers may not provide free samples to customers.~~

~~(3) **Internal quality control sampling:** Producers and processors may conduct limited self-sampling for quality control. All sample limits are based on calendar (~~months~~) quarters. Consuming samples for quality control may not take place (~~at a~~) on the licensed premises. Only the producer, processor, or their paid employees (~~of the licensee~~) may sample (~~the~~) cannabis flower, useable cannabis, cannabis-infused products, cannabis concentrates, and edible cannabis-infused product. The producer or processor must record the amount of each sample and the employee(s) conducting the sampling in the state's traceability system.~~

~~(a) Producers may sample (~~two grams~~) up to 14 grams of cannabis (~~flower~~) per (~~strain, per month~~) harvest, for internal quality control.~~

~~(b) Processors may sample (~~one unit~~) up to eight units per batch of (~~a new~~) cannabis-infused product meant to be ingested orally or otherwise taken into the body to be offered for sale on the market for internal quality control.~~

~~(c) Processors may sample up to (~~one unit~~) 3.5 grams per batch of (~~a new cannabis-infused extract for inhalation~~) cannabis concentrates to be offered for sale on the market for internal quality control. (~~No single sample may exceed 0.5 g.~~)~~

~~(d) Processors may sample one unit per batch of a new cannabis mix packaged to be offered for sale on the market. No single sample may exceed 1 g.~~

~~(e) Processors may sample one unit per batch of a new infused cannabis mix to be offered for sale on the market. No sample may exceed 0.5 g.~~

~~(f) Processors may sample one unit per batch of a new cannabis-infused product for topical application to be offered for sale on the market. No sample may exceed 16 ounces.~~

~~(5) **Retailers may not provide free samples to customers.**~~

~~(6))~~

~~(4) **Sample jars:**~~

~~(a) All sample jars must be labeled with the following:~~

~~(i) Information identifying it as a sample jar;~~

(ii) The UBI number of the licensed entity providing the sample;
 and
(iii) Weight of the product in ounces and grams or volume as applicable.

(b) A processor may provide a retailer free samples of useable cannabis packaged in a transparent sample jar protected by a plastic or metal mesh screen to allow customers to view and smell the product before purchase. The sample jar may not contain more than ((three and one-half)) 3.5 grams of useable cannabis. The plastic or metal mesh screen must be sealed onto the container, and must be free of rips, tears, or holes greater than 2 mm in diameter.

(c) Neither the sample jar ((and)) or the useable cannabis within may ((not)) be sold, transferred, given away, or otherwise provided to a customer ((and must be returned to the licensed processor who provided the useable cannabis and sample jar.

~~(b) **Sample jar labeling:** All sample jars must be labeled with the following:~~

~~(i) The unique identifier number generated by the traceability system;~~

~~(ii) Information identifying whether it is a vendor sample or sample jar;~~

~~(iii) The UBI number of the licensed entity providing the sample;~~
 and

~~(iv) Weight of the product in ounces and grams or volume as applicable.~~

~~(c) A cannabis processor must make quality assurance test results available to any retailer receiving sample jars. The processor must also provide a statement that discloses all pesticides applied to the cannabis plants and growing medium during production.~~

~~(d) If a cannabis extract was added to the product, the processor must disclose to the retailer the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract).~~

(d) Any useable cannabis no longer needed for display in sample jars may either be:

(i) Given to paid employees of the retailer free of charge. The sample amount must be recorded in the state's traceability system and will count towards the employees maximum sample limit described in (1)(j)(vi) of this section;

(ii) Disposed in accordance with the requirements in WAC 314-55-097 and recorded in the state's traceability system, consistent with WAC 314-55-083; or

(iii) Returned to the processor that provided the sample, to be disposed in accordance with WAC 314-55-097 and recorded in the state's traceability system, consistent with WAC 314-55-083.

~~((7)) (5) **Transportation.** Outgoing and return ((vendor)) trade samples and sample jars must adhere to the transportation requirements in WAC 314-55-085.~~

WSR 24-17-056
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed August 15, 2024, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-055.

Title of Rule and Other Identifying Information: WAC 196-16-120 Units, describes the qualifying activities and accrual of professional development hours that professional land surveyors use towards the 15 hours/year needed at the time of renewal.

Hearing Location(s): On September 25, 2024, at 11:00 a.m., Board of Registration for Professional Engineers and Land Surveyors (board) Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or the public may virtually participate in the WebEx hearing by accessing the hearing link on the board's rule-making page <https://brpels.wa.gov/about-us/laws-and-rules/rulemaking-activity>.

Date of Intended Adoption: October 17, 2024.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email shanan.gillespie@brpels.wa.gov, beginning August 21, 2024, 7:00 a.m., by September 25, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Mackenzie Wherrett, phone 360-664-1568, TTY 711, email Mackenzie.wherrett@brpels.wa.gov, by September 16, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the types and credit amount of some professional development hours (PDH) that professional land surveyors use when reporting their PDH during renewal periods.

Reasons Supporting Proposal: As a result of auditing the types of activities being reported as professional development hours, the board has adjusted the maximum hours for some activities and made changes to some language to move activities towards professionalism as related to the practice of land surveying.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: RCW 18.43.080.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., #201, Olympia, WA 98507, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., #201, Olympia, WA 98507, 360-968-4805.

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 board is not one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5) (a).

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.

Explanation of exemptions: RCW 34.05.310 (4)(g) applies because amendments are regarding process requirements for applying to an agency for a license or permit.

Scope of exemption for rule proposal:
Is fully exempt.

August 15, 2024
Ken Fuller
Director

OTS-5766.1

AMENDATORY SECTION (Amending WSR 18-22-075, filed 11/2/18, effective 12/3/18)

WAC 196-16-120 Units. Qualifying activities will accrue PDH as follows:

- 1. College hours:
 - a. Completion of 1 college semester hour 45 PDH
 - b. Completion of 1 college quarter hour 30 PDH
- 2. 1 Continuing education unit 10 PDH
- 3. For publication or presentation of each:
 - a. Authored technical paper or article 10 PDH
 - b. Authored book 30 PDH
- 4. Membership in professional/technical societies or government committees or boards. (Not to exceed 5 PDH/year) 2 1/2 PDH
- 5. For each hour of attendance at professional or technical society meetings with an informational program. (Not to exceed ((~~5~~) 10 PDH/year) 1 PDH
- 6. For each hour of attendance at board meetings or committee meetings (~~(or hearings)~~) of the board. (Not to exceed ((~~7 1/2~~) 10 PDH/year) 1 PDH
- 7. For each hour of preparation and subsequent presentation (*) of a professional development program at seminars, professional/technical meetings, conventions or conferences. (Not to exceed 10 PDH/year) (*) *This credit does not apply to full-time faculty* 1 PDH
- 8. For each hour of participation in committees of organizations whose purpose is to develop codes, standards, examinations and regulations. 1 PDH
- 9. For each hour of participation in an activity involving substantial and organized peer interaction, excluding time spent during regular employment. (Not to exceed 5 PDH/year) 1 PDH

- 10. For each hour of participation in organized courses, including employer provided courses, on ~~((first aid/safety,))~~ technical or management skills. (Not to exceed 5 PDH/year) 1 PDH
- 11. For each hour of participation in sessions, or courses sponsored by technical or professional societies, organizations or the board. 1 PDH
- 12. Each hour of self-study. (Not to exceed 5 PDH/year) 1 PDH
- 13. For reading chapters 58.09 RCW and 332-130 WAC. 2 PDH
- 14. Completion of CFedS program. 30 PDH
- 15. For each hour of participation in organized first aid, safety, and security training. (Not to exceed 5 PDH/year) 1 PDH

WSR 24-17-060
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed August 15, 2024, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-103.

Title of Rule and Other Identifying Information: Deferred compensation plan (DCP) revisions.

Hearing Location(s): On September 26, 2024, at 3:00 p.m. Microsoft Teams link is available on <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 255 330 665 343, Passcode x7rwvC; or phone 833-322-1218, Code 912 139 296#.

Date of Intended Adoption: October 1, 2024.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, beginning September 3, 2024, 8:00 a.m., by September 24, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, email drs.rules@drs.wa.gov, by September 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Completing implementation of the required minimum distribution provision from the SECURE Act of 2022 and revising language to align with other DCP WAC.

Statutory Authority for Adoption: RCW 41.50.[0]50 and the SECURE Act of 2022 (P.L. 117-328).

Statute Being Implemented: The SECURE Act of 2022 (P.L. 117-328).

Rule is necessary because of federal law, the SECURE Act of 2022 (P.L. 117-328).

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule, and DRS is not voluntarily making it applicable.

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).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers, so they do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 15, 2024
Bianca Stoner
Rules Coordinator

OTS-5494.2

AMENDATORY SECTION (Amending WSR 22-17-049, filed 8/11/22, effective 9/11/22)

WAC 415-501-488 How will the account be distributed if my beneficiary is my spouse? If you die with money in your account and your beneficiary is your spouse, an account will be established in your spouse's name.

(1) The distribution options will be provided to your spouse when DCP is notified of your death. Your spouse may choose the method of distribution (installment payments or lump sum) and may be subject to a required minimum distribution each calendar year until ~~((your))~~ the account is exhausted.

~~((a) The department must receive your spouse's election at least 30 days before distribution is to begin.~~

~~(b) Receiving more than the required minimum distribution during one calendar year does not excuse your spouse from taking the required minimum in any calendar year to which the required minimum applies.))~~

(2) Required minimum distribution. ~~((The required minimum distribution in each of the relevant calendar years is based on life expectancies set forth in the treasury regulations.))~~ If applicable, the department will begin distribution according to the minimum distribution requirements in the Internal Revenue Code Section 401 (a) (9).

Receiving more than the required minimum distribution during one calendar year does not excuse your spouse from taking the required minimum in the following calendar year(s).

(3) If your spouse dies before the entire account is exhausted, the remainder of the account will be paid according to their beneficiary election(s) on file (see WAC 415-501-480). If there is no beneficiary election on file, the remaining balance will be paid to their estate.

AMENDATORY SECTION (Amending WSR 22-17-049, filed 8/11/22, effective 9/11/22)

WAC 415-501-491 How will the account be distributed if my beneficiary is not my spouse? If you die with money in your account and your beneficiary is an individual other than your spouse, an account will be established in your beneficiary's name.

(1) For rules governing distribution to an entity other than an individual (e.g., a trust, estate, or organization), see WAC 415-501-493.

(2) The distribution options will be provided to your beneficiary when DCP is notified of your death, and will be based on treasury rules in effect at that time.

~~(3) ((The department must receive your beneficiary's election at least 30 days before distribution is to begin.))~~ Required minimum distribution. If applicable, the department will pay out any required minimum distribution(s) according to the Internal Revenue Code Section 401 (a) (9).

(4) If your beneficiary dies before the entire account is exhausted, the remainder of the account will be paid according to their beneficiary election(s) on file (see WAC 415-501-480). If there is no beneficiary election on file, the remaining balance will be paid to their estate.

AMENDATORY SECTION (Amending WSR 20-17-006, filed 8/5/20, effective 9/5/20)

WAC 415-501-495 Will the department honor domestic relations orders? (1) The department will honor a domestic relations order (DRO) only if the order:

(a) Was entered by a court of competent jurisdiction pursuant to the domestic relations law of any state;

(b) Establishes a right of a spouse or former spouse to a portion of your deferred compensation account pursuant to a division of property;

(c) Clearly states either the dollar amount or a percentage of the account to be transferred to the account of the spouse or former spouse from your account; and

(d) Provides your name and date of birth, and the name and date of birth of your spouse or former spouse.

(2) You must provide the address and Social Security number of both you and your spouse or former spouse to the department.

(3) To implement a DRO, the department will establish a separate account for the spouse or former spouse in the amount specified in subsection (1)(c) of this section. The transfer(s) will be prorated across all funds and money sources based on the amount awarded to the spouse or former spouse. Thereafter, the spouse or former spouse may provide investment instructions under WAC 415-501-475.

(4) Your spouse or former spouse may choose a method of distribution, including an eligible direct rollover.

(5) If a DRO filed with the department prior to January 1, 2002, provides that distribution to the spouse or former spouse is not available until you separate from service, the department will comply with the express terms of the order unless it is subsequently amended.

(6) Required minimum distribution and determining age requirements for distribution. If the spouse or former spouse has (~~not elected another method of distribution before~~) a balance in their account at the time the original account holder reaches ((age seventy-two)) the required minimum distribution age, the department will begin distribution in accordance with the minimum distribution requirements (~~in IRC~~) as designated in Internal Revenue Code Section 401 (a) (9) and the treasury regulations thereunder.

(7) If the spouse or former spouse dies before the account is fully distributed, the remaining balance will be paid according to the beneficiary election(s) on file (see WAC 415-501-480). If there is no beneficiary election on file, the remaining balance will be paid to their estate.

WSR 24-17-061
PROPOSED RULES
DEPARTMENT OF
VETERANS AFFAIRS

[Filed August 15, 2024, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-044.

Title of Rule and Other Identifying Information: WAC 484-10-035 Veterans' affairs advisory committee (VAAC).

Hearing Location(s): On September 24, 2024, at 3:00 [p.m.], at the Department of Veterans Affairs (DVA), 1102 Quince Street S.E., Olympia, WA 98504; or Microsoft Teams, Meeting ID 267 538 422 073, Passcode rNr4Jz; or dial in by phone, +1 564-999-2000,,281649976# United States, Olympia, Phone conference ID 281 649 976#.

Date of Intended Adoption: September 25, 2024.

Submit Written Comments to: Heidi Audette, 1102 Quince Street S.E., email heidia@dva.wa.gov, fax 360-725-2197, by September 24, 2024.

Assistance for Persons with Disabilities: Contact Heidi Audette, phone 360-791-8966, fax 360-725-2197, TTY 360-725-2199, email heidia@dva.wa.gov, by September 23, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will update outdated language, address changes in meeting structure, acknowledge homes liaisons and community town halls, and update the process for removing a VAAC member as a result of not attending regular meetings.

Reasons Supporting Proposal: Existing language is outdated. It does not address VAAC members serving as liaisons to the four state veterans homes. It also does not address the current meeting structure of holding community town halls across the state, and because of the meeting structure changes, the process for removing a VAAC member as a result of not attending meetings needs to be updated to reflect the changes in how VAAC conducts itself.

Statutory Authority for Adoption: RCW 43.60A.070.

Statute Being Implemented: RCW 43.60A.080.

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

Name of Proponent: DVA, governmental.

Name of Agency Personnel Responsible for Drafting: Heidi Audette, Olympia, 360-791-8966; Implementation and Enforcement: Sue LaVoie, Olympia, 360-485-1158.

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. Neither a small business economic impact statement nor a school district fiscal impact statement are required with these changes as they only impact VAAC.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: These rules relate only to internal governmental operations and are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:
Is fully exempt.

August 6, 2024

Heidi Audette

Communications and Legislative Director

OTS-5754.1

AMENDATORY SECTION (Amending WSR 92-17-045, filed 8/14/92, effective 9/14/92)

WAC 484-10-035 Veterans' affairs advisory committee. Rules of operation.

(1) The committee shall have the following powers and duties:

(a) To serve in an advisory capacity to the governor and the director on all matters pertaining to the department of veterans affairs;

(b) To acquaint themselves fully with the operations of the department and recommend such changes to the governor and the director as they deem advisable.

(2) The department of veterans affairs, and its director, shall fully recognize the advisory committee, as established under RCW 43.60A.080.

(3) The committee chair shall, following annual elections but before September, confer with the director to set the number of, and schedule for, authorized meetings during the following (~~twelve~~) 12 months.

(4) A quorum must be present prior to the transaction of official committee business. A quorum for the committee shall be construed to be a simple majority of the committee members authorized in RCW 43.60A.080.

(5) The order of business (~~will be according to Robert's Rules of Order as revised, and the usual order of business~~) for regular meetings shall be as follows:

(a) Pledge of Allegiance;

(b) Roll call and introductions;

(c) (~~Reading and~~) Approval of minutes;

(d) (~~Reading of official and other communications~~) Discussion of upcoming town hall or community meetings;

(e) (~~Audience introductions~~) Homes liaisons reports and discussion;

(f) Report from the director or (~~his/her~~) their designee;

(g) Report of committees;

(h) (~~Old business~~) Other agenda items identified by the chair and director;

(i) New business;

(j) (~~Agenda set for next meeting~~;

~~k~~) Time and place for next meeting;

(~~l~~) k) Adjournment (by majority vote of members present).

(6) Summary minutes shall be kept of (~~all of the~~) committee proceedings and a complete copy will be provided to each member of the committee and the director within (~~fourteen~~) 14 calendar days of ad-

jourment. When requested to do so by the committee, the director shall present a copy of the minutes to the governor.

(7) Each member of the committee is expected to actively participate in and attend all regular meetings of the committee either in person, or virtually if that option is available. ~~((The name of any committee member who))~~ If a committee member has three consecutive unexcused absences from ~~((regularly scheduled))~~ regular meetings ~~((will be automatically forwarded to the governor's office with a request that a replacement be named to the committee))~~, the director will meet with the member to determine if a replacement is needed. If a replacement is needed, a copy of the replacement request will be forwarded to the appropriate veterans organization department commander and subsequently to the governor's office for review and appointment.

(8) ~~((The chairperson shall notify, in writing, any member having three consecutive unexcused absences that a recommendation is being forwarded to the governor.~~

~~((9))~~) A member will receive an excused absence at the discretion of the chairperson or director.

~~((10))~~) (9) The director, or ~~((his/her))~~ their designee, and such members of the department staff as the director selects, shall meet with the committee on a regular basis.

~~((11))~~) (10) The committee will annually review the quality and range of services performed by the department.

~~((12))~~) (11) Annually, the committee shall designate one of its meetings as a joint meeting with the commanders and service officers of all veterans organizations nationally recognized by the Federal Department of Veterans Affairs.

~~((13))~~) (12) During June of each year, there shall be an election of the chairperson and vice chairperson for the coming year. New officers shall take office in September. Those elected will serve for one year and be limited to one term in succession.

~~((14))~~) (13) All meetings and events relating to the advisory committee shall be accessible to all members and guests.

~~((15))~~) (14) The chairperson may appoint special committees consisting of not less than two members when necessary to make special inquiries, reports, and investigations.

WSR 24-17-062
PROPOSED RULES
DEPARTMENT OF
VETERANS AFFAIRS

[Filed August 15, 2024, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-044.

Title of Rule and Other Identifying Information: WAC 484-50-010

Exemptions.

Hearing Location(s): On September 24, 2024, at 3:00 [p.m.], at the Department of Veterans Affairs (DVA), 1102 Quince Street S.E., Olympia, WA 98504; or Microsoft Teams, Meeting ID 267 538 422 073, Passcode rNr4Jz; or dial in by phone, +1 564-999-2000,,281649976# United States, Olympia, Phone conference ID 281 649 976#.

Date of Intended Adoption: September 25, 2024.

Submit Written Comments to: Heidi Audette, 1102 Quince Street S.E., email heidia@dva.wa.gov, fax 360-725-2197, by September 24, 2024.

Assistance for Persons with Disabilities: Contact Heidi Audette, phone 360-791-8966, fax 360-725-2197, TTY 360-725-2199, email heidia@dva.wa.gov, by September 23, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates WAC 484-50-010 to align with the recent update to the governing statute RCW 42.56.440 and 43.60A.290. To accomplish this, we intend to add language to subsection (1)(j) regarding veteran discharge papers and also add language to subsection (2)(b) explaining the DVA records denial appeal option to the public.

Reasons Supporting Proposal: Changes to governing statutes.

Statutory Authority for Adoption: RCW 42.56.440 and 43.60A.290.

Statute Being Implemented: RCW 42.56.440.

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

Name of Proponent: DVA, governmental.

Name of Agency Personnel Responsible for Drafting: Heidi Audette, Olympia, 360-791-8966; Implementation and Enforcement: Jennifer McDaniel, Olympia.

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. Neither a small business economic impact statement nor a school district fiscal impact statement is required with these changes, as they impact only the veterans affairs advisory committee.

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.

Explanation of exemptions: These rules relate only to internal governmental operations and are not subject to violation by a nongovernment party.

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. These rules relate to internal governmental operations and do not impose more-than-minor costs.

August 6, 2024

Heidi Audette
Communications and Legislative Director

OTS-5755.1

AMENDATORY SECTION (Amending WSR 20-15-006, filed 7/2/20, effective 8/2/20)

WAC 484-50-010 What if the public record contains information that is exempt from public disclosure? (1) Public records and information may be exempt from disclosure or production under chapter 42.56 RCW or other state or federal laws. Commonly applicable exemptions include, but are not limited to, the following:

- (a) Under RCW 42.56.230(1), personal information in files maintained for WDVA clients. Personal information includes, but is not limited to:
- (i) Names;
 - (ii) Telephone numbers;
 - (iii) Fax numbers;
 - (iv) Email addresses;
 - (v) Social Security numbers;
 - (vi) VA claim numbers;
 - (vii) VA disability percentages;
 - (viii) DOD type of military separation, characterization of service, narrative reason for separation, reentry code, separation code;
 - (ix) Account numbers;
 - (x) Certificate or license numbers;
 - (xi) Vehicle identifiers and serial numbers, including license plate numbers;
 - (xii) Device identifiers and serial numbers;
 - (xiii) Web universal resource locators (URLs);
 - (xiv) Internet protocol (IP) address numbers;
 - (xv) Biometric identifiers, including finger and voice prints;
 - (xvi) Full face photographic images and any comparable images;
 - (xvii) Any other unique identifying number, characteristic, or code;
 - (xviii) All geographic subdivisions smaller than a state, including street address, mailing address, city, county, precinct, geocodes, and zip code, except for the initial three digits of a zip code; and
 - (xix) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death.
- (b) Under chapter 70.02 RCW and related federal laws, protected health care information and medical records.
- (c) Under RCW 42.56.230(3), personal information in files maintained for WDVA employees or elected officials to the extent that disclosure would violate their right to privacy.
- (d) Under RCW 42.56.230(5), credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including Social Security numbers, except when disclosure is expressly required by or governed by other law.

(e) Under RCW 42.56.250, the following information from personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

- (i) Residential addresses;
- (ii) Residential phone numbers;
- (iii) Personal wireless telephone numbers;
- (iv) Personal email addresses;
- (v) Social Security numbers;
- (vi) Driver's license numbers;
- (vii) Identocard numbers;
- (viii) Emergency contact information; and
- (ix) Names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.

(f) Under RCW 42.56.235, records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation.

(g) Effective July 1, 2020, agency employee records described under RCW 42.56.660.

(h) Effective July 1, 2020, lists of state agency employee names under RCW 42.56.675.

(i) Under RCW 42.56.640 and 43.17.410, sensitive personal information of vulnerable individuals and in-home caregivers for vulnerable populations, except as allowed under subsection (3) of this section.

(j) Under RCW 42.56.440, veteran discharge or separation documents held by the department of veteran affairs are confidential and not subject to disclosure, except as provided in RCW 43.60A.290.

(2) If the requested public record contains information that is exempt from public disclosure, WDVA may:

(a) As appropriate, release the nonexempt portion, explaining what exemptions apply to redacted portions of the record;

(b) As appropriate, deny release of the entire record, sending a written explanation and citing the exemption that applies to the denial, while also giving the requestor the option to ask for an internal review of the records denial should they wish to do so; or

(c) Neither confirm or deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed, when a denial would reveal information that is confidential and must not be disclosed.

(3) Sensitive personal information under subsection (1)(i) of this section may be disclosed or produced if WDVA determines that the requestor:

(a) Meets the criteria under RCW 42.56.645; and

(b) Has complied with any procedures developed by WDVA to protect the confidentiality of the information.

WSR 24-17-071
PROPOSED RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION
[Filed August 16, 2024, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-107.

Title of Rule and Other Identifying Information: WAC 391-45-400

Compliance.

Hearing Location(s): On October 2 and October 23, 2024, at 10:00 a.m., by Zoom <https://perc-wa-gov.zoom.us/j/2679794803>. Public viewing for both meetings is also available at 112 Henry Street, Suite 300, Olympia, WA 98504 [98504].

Date of Intended Adoption: November 12, 2024.

Submit Written Comments to: Dario de la Rosa, 112 Henry Street, Suite 300, Olympia, WA 98504, email dario.delarosa@perc.wa.gov, fax 360-570-7334, beginning September 5, 2024, at 9:00 a.m., by September 27, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Diane Tucker, phone 360-570-7335, fax 360-570-7334, email diane.tucker@perc.wa.gov, by September 27, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: When an unfair labor practice violation is found, the public employment relations commission (PERC) issues an order requiring the respondent to take certain steps to remedy the violation of state law. PERC assigns a staff member to monitor the compliance process to ensure that the order is complied with. The purpose of WAC 391-45-400 is to provide procedural structure to the compliance process.

Reasons Supporting Proposal: PERC currently does not have any administrative rules governing the compliance process.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 47.64.135, and 49.39.060.

Statute Being Implemented: RCW 41.58.070.

Name of Proponent: PERC, [governmental].

Name of Agency Personnel Responsible for Drafting: Dario de la Rosa, 112 Henry Street, Suite 300, Olympia, WA 98504, 360-570-7328; Implementation and Enforcement: Michael P. Sellars, 112 Henry Street, Suite 300, Olympia, WA 98504, 360-570-7306.

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. Proposed rule gives adjudicative proceedings before PERC.

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.

Scope of exemption for rule proposal:

Is fully exempt.

August 16, 2024
Dario de la Rosa
Rules Coordinator

OTS-5765.1

NEW SECTION

WAC 391-45-400 Compliance. (1) After issuance of a remedial order or entry of a court judgment enforcing an order, an agency compliance officer will work with the parties to facilitate compliance with the terms of the order.

(2) The compliance officer will regularly report to the executive director on the parties' progress toward compliance with the order. After a reasonable amount of time, the compliance officer will make a recommendation as to whether the parties have achieved compliance or whether disputed issues regarding compliance remain.

(a) If the compliance officer recommends that the parties have achieved compliance and neither party disputes compliance, the executive director may accept compliance and close the case.

(b) If the compliance officer identifies that disputed issues regarding compliance remain, the executive director will assign the matter to an examiner under WAC 391-45-130 to conduct a hearing on the disputed issues. If the matter is assigned to an examiner for a hearing, the compliance officer may continue compliance facilitation efforts with the parties.

(3) Hearings on whether the parties have complied with the terms of the order will be governed by WAC 391-45-270 and 391-45-290. The issues will be limited to the disputed issues regarding compliance. Unless appealed to the commission under WAC 391-45-350, a decision issued on the disputed issues under this section is the final order of the agency with the same force and effect as if issued by the commission.

WSR 24-17-072
PROPOSED RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION
[Filed August 16, 2024, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-037.

Title of Rule and Other Identifying Information: WAC 391-25-070
Contents of petition filing forms, 391-25-110 Supporting evidence—
Showing of interest confidential, and 391-25-400 Card check.

Hearing Location(s): On October 2 and October 23, 2024, at 10:00
a.m., by Zoom <https://perc-wa-gov.zoom.us/j/2679794803>. Public viewing
for both meetings is also available at 112 Henry Street, Suite 300,
Olympia, WA 98504 [98504].

Date of Intended Adoption: November 12, 2024.

Submit Written Comments to: Dario de la Rosa, 112 Henry Street,
Suite 300, Olympia, WA 98504, email dario.delarosa@perc.wa.gov, fax
360-570-7334, beginning September 5, 2024, at 9:00 a.m., by September
27, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Diane Tucker,
phone 360-570-7335, fax 360-570-7334, email diane.tucker@perc.wa.gov,
by September 27, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: In 2024, the Washington state legisla-
ture adopted RCW 41.58.080, which requires the public employment rela-
tions commission (PERC) to adopt rules to allow for the use of elec-
tronic signatures for showing of interest cards. The proposed changes
to chapter 391-25 WAC are necessary to implement the provisions of RCW
41.58.080.

Reasons Supporting Proposal: RCW 41.58.080(4) requires PERC to
adopt rules to implement.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090,
41.58.050, 41.58.080, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and
49.39.060.

Statute Being Implemented: RCW 41.58.080.

Name of Proponent: PERC, governmental.

Name of Agency Personnel Responsible for Drafting: Dario de la
Rosa, 112 Henry Street, Suite 300, Olympia, WA 98504, 360-570-7328;
Implementation and Enforcement: Michael P. Sellars, 112 Henry Street,
Suite 300, Olympia, WA 98504, 360-570-7306.

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. Pro-
posed rule gives adjudicative proceedings before PERC.

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 explicit-
ly and specifically dictated by statute; and rules adopt,
amend, or repeal a procedure, practice, or requirement re-
lating to agency hearings; or a filing or related process
requirement for applying to an agency for a license or per-
mit.

Scope of exemption for rule proposal:

Is fully exempt.

August 16, 2024
Dario de la Rosa

OTS-5767.1

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

WAC 391-25-070 Contents of petition filing forms. Each completed representation petition filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

- (1) Information identifying the parties and their representatives (if known), including:
 - (a) The name, email address, mailing address, and telephone number of the employer and of the employer's representative.
 - (b) The name, email address, mailing address, and telephone number of the petitioner and of the petitioner's representative.
 - (c) The name, email address, mailing address, and telephone number of any organization that currently represents the employees involved and of its principal representative.
- (2) Information concerning the parties' relationships, including:
 - (a) The employer department or division involved;
 - (b) The parties' contractual relationship, indicating that:
 - (i) The parties have never had a contract covering the employees involved; or
 - (ii) The parties have had a contract, and a copy of the current or most recent collective bargaining agreement is attached.
- (3) A description of the proposed or existing bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions and the number of employees in the proposed or existing bargaining unit(~~(+)~~).
- (4) A statement consenting to the public employment relations commission's jurisdiction over the public employer and petitioner(~~(+ and)~~).
- (5) (~~(The existence of)~~) An indication as to whether any unfair labor practice complaints involving the petitioned-for employees exist.
- (6) A statement that:
 - (a) The petitioner claims to represent a majority of the employees involved and requests certification as exclusive bargaining representative of the bargaining unit;
 - (b) The employees in the bargaining unit desire to change their exclusive bargaining representative and to designate the petitioner as their exclusive bargaining representative; or
 - (c) The employees in the bargaining unit no longer desire to be represented by any employee organization.
- (7) A declaration that attests to the authenticity of the showing of interest submitted under WAC 391-25-110. If submitting showing of interest cards with electronic signatures as authorized by RCW 41.58.080, the declaration must also, at a minimum:
 - (a) Identify the technology used to obtain and verify the signatures on the showing of interest cards;

(b) Provide the methods used to ensure the authenticity of the signatures; and

(c) Confirm that the information transmitted to the signers was the same information to which the signers assented.

(8) Any other relevant facts.

~~((8))~~ (9) The name, signature, and title, if any, of the person filing the petition, as well as the date of the signature.

~~((9))~~ (10) Any other information requested in the representation petition filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

WAC 391-25-110 Supporting evidence—Showing of interest confidential. ~~((1))~~ A petition filed by employees or an employee organization must be accompanied by a showing of interest indicating that the petitioner has the support of at least 30 percent of the employees in the bargaining unit which the petitioner claims to be appropriate. The language on the showing of interest card must indicate that the employee signing the card supports the purpose of the petition as described in WAC 391-25-070(6). The showing of interest must be filed under the same timeliness standards applicable to the petition and consist of original or legible paper or electronic copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate.

(1)(a) Authorization cards or letters submitted in support of a petition for a new bargaining unit of unrepresented employees or to add unrepresented employees to an existing bargaining under WAC 391-25-080 are not valid unless electronically signed or hand-signed and dated during the one-year period preceding the filing of the petition. The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

~~((a))~~ (i) The employee's name typed or printed legibly, the employee's electronic or hand-signed signature, and the date of the employee's electronic or hand-signed signature;

~~((b))~~ (ii) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

~~((c))~~ (iii) A statement that the showing of interest may be used for purposes of a card check election;

~~((d))~~ (iv) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

~~((e))~~ (v) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of card check.

(b) Authorization cards submitted in support of a petition to decertify or change the bargaining representative of an existing bargaining unit of employees are not valid unless hand-signed and dated during the one-year period preceding the filing of the petition.

(2) The agency shall notify the petitioner of the existence and number of any revocations filed under subsection (1) ~~((e))~~ (a)(v) of

this section before the commencement of the card check but shall not disclose the identities of the employees involved.

(3) For any bargaining unit affected by RCW 74.39A.270 and 74.39A.300, the showing of interest requirement (~~described in subsection (1) of this section~~) is 10 percent for either a petitioner or an intervenor.

(4) The agency shall not disclose the identities of employees whose authorization cards or letters are filed with the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

(c) To preserve the confidentiality of the showing of interest and the right of employees to freely express their views on the selection of a bargaining representative, the agency shall not honor any attempt by an employee to withdraw any authorization submitted for purposes of this section.

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

WAC 391-25-400 Card check. (1) If only one organization is seeking certification as the exclusive representative of unrepresented employees and the showing of interest exceeds 50 percent of the employees subject to the petition, then the executive director or the executive director's designee may direct a card check to determine whether the employees desire to be represented by the petitioner. A card check may not be directed unless the petitioner submits a declaration that satisfies WAC 391-25-070(7).

(2) Any employee((s)) desiring to withdraw their showing of interest card((s)) for purposes of the card check may do so by sending an individual card or letter signed by the employee to the executive director or the executive director's designee before the date specified in the direction of card check. The agency shall notify the petitioner of any such request before the commencement of the card check but shall not disclose the identity of the employee submitting the request.

~~(3) ((The employer shall make available to the agency original or legible copies of employment records containing the names and signatures of the employees in the bargaining unit.~~

~~(4))~~ Before the commencement of the card check, the petitioner may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election.

~~((5) All card checks must be by actual comparison of records provided by the parties))~~ (4) When conducting card checks, the agency must compare the valid showing of interest cards submitted under WAC 391-24-110 to the agreed-upon list of eligible employees. The agency shall not disclose the names of employees giving representation authorization in favor of the organization. Following the comparison of records, the agency shall issue a tally sheet demonstrating the outcome of the card check.

~~((6))~~ (5) The card check procedures described in subsections (1) through ~~((5))~~ (4) of this section are not applicable for certificated employees who collectively bargain under chapter 41.59 RCW, academic employees who collectively bargain under chapter 28B.52 RCW, employees of the Washington state legislature who collective bargain under chapter 44.90 RCW, symphony musicians who collectively bargain under chapter 49.39 RCW, and the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

WSR 24-17-077

PROPOSED RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed August 16, 2024, 2:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-055.

Title of Rule and Other Identifying Information: Occupational therapy temporary permits and fee updates. The occupational therapy practice board (board) and the department of health (department) are proposing rule amendments to WAC 246-847-117 in response to 2SHB 1009 (chapter 165, Laws of 2023), to reducing barriers for military spouses entering and remaining in the occupational therapy (OT) workforce. Additionally, the board and the department are proposing amendments to WAC 246-847-990 to create a new fee to cover the cost of the proposal.

Hearing Location(s): On October 18, 2024, at 9:05 a.m., virtual via Microsoft Teams meeting. Join on your computer, mobile app, or room device. Copy this URL into your browser to join the meeting https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%23%2F1%2Fmeetup-join%2F19%3Ameeting_YWIZNDg4NTMTYjA5ZS00Y2M5LTg1MTEtMmFmYzI5NzI3NDVh%40thread.v%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%25220id%2522%253a%25226b58aff3-5555-4d17-ae13-0788bdac52c5%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=3f455b4b-61db-484a-a141-c1850bd32851&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true; or download Microsoft Teams <https://www.microsoft.com/en-us/microsoft-teams/download-app>, Meeting ID 220 261 893 741, Passcode DC3u4E; or call in (audio only), +1 564-999-2000,,78115422# United States, Olympia, Phone Conference ID 781 154 22#; or in person at Green River College, 12401 S.E. 320th Street, Room 230, Auburn, WA 98902.

Date of Intended Adoption: October 18, 2024.

Submit Written Comments to: Kathy Weed, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, kathy.weed@doh.wa.gov, beginning the date and time of this filing, by October 11, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kathy Weed, phone 360-236-4883, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov, by October 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board and the department are proposing revisions to the temporary permit requirements to extend the length of time the permit can be active from 90 days to 180 days to implement 2SHB 1009. The board is proposing changing the length of time the permit is active to 180 days for all applicants, not just military spouses. This proposed change will remove barriers to entering and remaining in the health care workforce and obtaining full licensure. The board and department are also proposing a fee for the 180-day temporary permit as there is no fee for it established in rule.

Reasons Supporting Proposal: The intent of 2SHB 1009, codified as RCW 18.340.020, is to make disciplining authorities review and adjust licensure requirements to remove barriers to entering and remaining in the health care workforce for military spouses. RCW 18.340.020 creates standards for issuing a temporary permit to military spouses and re-

quires that a temporary permit be issued to a military spouse for no less than 180 days. Under current rule, temporary permits are issued for only 90 days. Rule making is necessary to amend licensure requirements to comply with RCW 18.340.020.

Currently, there is no fee established in rule to cover the costs of issuing temporary permits. RCW 43.70.250 requires that the costs of licensing each profession be fully borne by members of that profession. The office of financial management also requires professions to maintain a reasonable cash reserve to cover fluctuations in cash flow and operating expenses. These proposed fees are needed to ensure the department is in line with RCW 43.70.250 and the fees set are sufficient to recover the costs of issuing temporary permits.

Statutory Authority for Adoption: RCW 18.59.130, 18.340.020, 43.70.110, 43.70.250, and 43.70.280.

Statute Being Implemented: RCW 18.340.020.

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

Name of Proponent: Department of health and occupational therapy practice board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Weed, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4883.

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 Kathy Weed, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4883, TTY 711, email kathy.weed@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules only impact Washington state credentialed occupational therapists and out-of-state occupational therapists seeking a Washington state credential.

Scope of exemption for rule proposal:

Is fully exempt.

August 14, 2024
Mary Spores, OT, Chair
Occupational Therapy Practice Board
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5528.2

AMENDATORY SECTION (Amending WSR 92-18-015, filed 8/24/92, effective 9/24/92)

WAC 246-847-117 Temporary permits—Issuance and duration pursuant to RCW 18.130.075. (1) Unless there is a basis for denial of an occupational therapist or occupational therapy assistant license, an

applicant who is currently licensed in a jurisdiction considered by the board to have licensing standards substantially equivalent to Washington's shall be issued a temporary practice permit after receipt of the following documentation by the department of health:

(a) Submission of a completed occupational therapist or occupational therapy assistant application on which the applicant indicates that he or she wishes to receive a temporary practice permit;

(b) Payment of the application fee and temporary practice permit fee; and

(c) Direct written verification of current licensure from the state whose licensing standards are substantially equivalent to Washington's.

(2) The temporary practice permit shall expire upon the issuance of a license by the board; initiation of an investigation by the board; or ~~((ninety))~~ 180 days, whichever occurs first.

(3) An applicant who receives a temporary practice permit and who does not complete the licensure application process shall not receive additional temporary practice permits even upon submission of a new application in the future.

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

WAC 246-847-990 Occupational therapy fees and renewal cycle.

(1) Licenses must be renewed every two years on the practitioner's birthday as provided in ~~((chapter 246-12 WAC, Part 2))~~ WAC 246-12-020 through 246-12-051.

(2) The following nonrefundable fees will be charged for occupational therapist:

Title of Fee	Fee
Original application	
Application and initial license fee	\$150.00
HEAL-WA* surcharge	16.00
Limited permit fee	55.00
<u>Temporary permit fee</u>	<u>50.00</u>
Active license renewal	
License renewal	125.00
Late renewal fee	65.00
HEAL-WA* surcharge (\$16.00 per year for two-year cycle)	32.00
Expired license reissuance	80.00
Inactive license renewal	
Inactive license	15.00
Expired license reissuance	15.00
HEAL-WA* surcharge (\$16.00 per year for two-year cycle)	32.00
Duplicate license	30.00
Verification of license	30.00

(3) The following nonrefundable fees will be charged for occupational therapy assistant:

Title of Fee	Fee
Original application	
Application and initial license fee	\$150.00
HEAL-WA* surcharge	16.00
Limited permit fee	45.00
<u>Temporary permit fee</u>	<u>50.00</u>
Active license renewal	
License renewal	105.00
Late renewal fee	55.00
Expired license reissuance	70.00
HEAL-WA* surcharge (\$16.00 per year for two-year cycle)	32.00
Inactive license renewal	
Inactive license	15.00
Expired inactive license reissuance	14.00
HEAL-WA* surcharge (\$16.00 per year for two-year cycle)	32.00
Duplicate license	30.00
Verification of license	30.00

*HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

WSR 24-17-079

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 18, 2024, 6:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-093.

Title of Rule and Other Identifying Information: WAC 182-502-0005
Provider enrollment: Core provider agreement (CPA) or Nonbilling provider agreement, 182-502-0006 Enrollment for nonbilling individual providers (repealed), 182-502-0010 When the medicaid agency enrolls, 182-502-0012 When the medicaid agency does not enroll, 182-502-0030 Termination of provider enrollment—For cause, 182-502-0040 Termination of provider enrollment—For convenience, 182-502-0050 Provider dispute of an agency action, and 182-502-0100 General conditions of payment.

Hearing Location(s): On September 24, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_M78jsSfQ7q0abAHTCc3iQ. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than September 25, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning August 20, 2024, 8:00 a.m., by September 25, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email Johanna.Larson@hca.wa.gov, by September 6, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is reorganizing rules related to enrollment and payment into proper sections, adding clarity, and removing the reconsideration process. WAC 182-502-0012 is being revised to reflect that if HCA denies a request for enrollment, there is no longer a reconsideration process, but the provider can reapply. WAC 182-502-0040 is being revised to reflect that terminations for convenience are HCA's final decision and there is no reconsideration process. An emergency rule was filed on April 12, 2024, under WSR 24-09-044 for WAC 182-502-0005 to allow for back dating on the provider enrollment application. A second emergency rule to replace the first emergency was filed on May 8, 2024, under WSR 24-11-036 to add WAC 182-502-0006. With the permanent rule making, WAC 182-502-0006 will be repealed due to duplicative language throughout other WAC. The nonbilling provider language will now be found in WAC 182-502-0005.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Pooji Tran, P.O. Box 42716, Olympia, WA 98504, 360-725-1192.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 18, 2024
Wendy Barcus
Rules Coordinator

OTS-5352.4

AMENDATORY SECTION (Amending WSR 23-21-061, filed 10/12/23, effective 11/12/23)

WAC 182-502-0005 Provider enrollment—Core provider agreement (CPA) or nonbilling provider agreement. (1) The agency only (~~pays claims submitted for services provided by or on behalf of:~~

~~(a) A health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency;~~

~~(b) A servicing provider enrolled under an approved CPA with the agency; or~~

~~(c) A provider who has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.~~

~~(2) Servicing providers performing services for a client must be enrolled under the billing providers' CPA.~~

~~(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.~~

(4)) enrolls a health care professional, health care entity, supplier, or contractor of service through approval of an application for:

(a) A core provider agreement (CPA);

(b) A nonbilling provider agreement; or

(c) Adding a servicing provider under either a CPA or a nonbilling provider agreement.

(2) The agency may enter into a single case agreement or other forms of written agreements with a health care professional, health care entity, supplier, or contractor of service.

(3) Servicing providers must comply with the requirements for providers in the agreement under which they are enrolled and agency rules.

(4) Only a licensed health care professional whose scope of practice includes ordering, prescribing, or referring under their license may enroll as a nonbilling provider.

(5) A nonbilling provider enrolled only for purposes of ordering, prescribing, or referring health care services for a billing provider, is exempt from the rules in WAC 182-502-0160 and may bill a client for health care services when:

(a) The provider is not acting in their capacity as an ordering, prescribing, or referring of health care services for a billing provider;

(b) The provider is not enrolled with a managed care organization (MCO) that has a contract with the agency under WAC 182-538-067; and

(c) The provider documents the client was informed the client would be billed for the health care services being provided.

(6) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, ~~((and))~~ 182-501-0184, and 182-502-0120.

~~((5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the application, except as provided in subsection (6) of this section or WAC 182-502-0006(5)).~~

~~(6))~~ **(7) Effective date of enrollment of a provider.**

(a) Enrollment of a provider applicant is effective on the date the agency approves the provider application for enrollment or a date designated by the agency.

~~((a))~~ (b) A provider applicant may ~~((ask for))~~ request an exception allowing an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency ~~((s chief medical officer))~~.

(c) The request for an exception must specify the requested effective date and include an explanation justifying the earlier effective date.

(d) The ~~((chief medical officer))~~ agency will not authorize an effective date requested by the provider that is ~~((~~

~~(i))~~ earlier than the effective date of any required license or certification ~~((; or~~

~~(ii) More than 365 days prior to the agency's approval of the provider application))~~.

~~((b))~~ (e) The ~~((chief medical officer or designee))~~ agency may approve an exception ~~((s))~~ as requested by the provider as follows for:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need ~~((as determined by the agency's chief medical officer or designee))~~.

~~((e))~~ (f) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.

~~((d))~~ (g) Exceptions granted under this subsection ~~((6))~~ do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-502-0006 Enrollment for nonbilling individual providers.

OTS-5654.1

AMENDATORY SECTION (Amending WSR 15-10-003, filed 4/22/15, effective 5/23/15)

WAC 182-502-0010 When the medicaid agency enrolls. (1) Nothing in this chapter obligates the medicaid agency to enroll any eligible health care professional, health care entity, supplier, or contractor of service who requests enrollment.

(2) To enroll as a provider (as defined in WAC 182-500-0085) with the agency, a health care professional, health care entity, supplier, or contractor of service rendering services in the state of Washington (persons or entities providing services out of Washington state see WAC 182-502-0120 and 182-501-0175) must, on the date of application:

(a) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules, or, if exempt under federal law, according to the laws and rules of any other state (~~Persons or entities outside of Washington state, see WAC 182-502-0120~~);

(b) Be enrolled with medicare, when required in specific program rules;

(c) Have current professional liability coverage, individually or as a member of a group, to the extent the health care professional, health care entity, supplier or contractor is not covered by the Federal Tort Claims Act, including related rules and regulations;

(d) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(e) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;

(f) Sign, without modification, a core provider agreement (CPA) (~~((HCA 09-015), disclosure of ownership form, and debarment form (HCA 09-016) or a contract with the agency)~~) or nonbilling provider agreement, and a debarment form. Servicing providers are not required to sign as their enrollment is based upon being included under an organizational CPA or nonbilling provider agreement;

(g) Agree to accept the payment from the agency as payment in full (~~(+)~~) in accordance with 42 C.F.R. § 447.15 requiring acceptance of state payment as payment in full (~~(and)~~) (see also WAC 182-502-0160 billing a client);

(h) Fully disclose ownership, employees who manage, and other control interests (e.g., member of a board of directors or office), as requested by the agency. Indian health services clinics are exempt from this requirement (~~(. If payment for services is to be made to a group practice, partnership, or corporation, the group, partnership, or corporation must enroll and provide its national provider identifi-~~

er (NPI) (if eligible for an NPI) to be used for submitting claims as the billing provider);

(i) Have screened employees and contractors with whom they do business prior to hiring or contracting to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5;

(j) Pass the agency's screening process, including license verifications, database checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450.

(i) The agency uses the same screening level risk categories that apply under medicare.

(ii) For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare; and

(k) (~~Agree to~~) Pay an application fee, if required by CMS under 42 C.F.R. 455.460.

(3) Servicing providers performing services for a client must be enrolled under the billing providers' CPA or a nonbilling provider agreement.

(4) Only a licensed health care professional whose scope of practice under their licensure includes ordering, prescribing, or referring may enroll as a nonbilling provider.

OTS-5655.1

AMENDATORY SECTION (Amending WSR 19-21-067, filed 10/11/19, effective 11/11/19)

WAC 182-502-0012 When the medicaid agency does not enroll. (1)

The medicaid agency does not enroll a health care professional, health care entity, supplier, or contractor of service for reasons which include, but are not limited to, the following:

(a) The agency determines that:

(i) There is a quality of care issue with significant risk factors that may endanger client health, or safety, or both (see WAC 182-502-0030(1) (~~(a)~~)); or

(ii) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030(1) (~~(b)~~)).

(b) The health care professional, health care entity, supplier or contractor of service:

(i) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(ii) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(iii) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(iv) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(v) Is noncompliant with the department of health or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(vi) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(vii) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014 and 182-502-0016; or

(viii) Does not have sufficient liability insurance according to WAC 182-502-0016 for the scope of practice, to the extent the health care professional, health care entity, supplier or contractor of service is not covered by the Federal Tort Claims Act, including related rules and regulations.

(c) A site visit under 42 C.F.R. 455.432 reveals that the provider has failed to comply with a state or federal requirement.

~~(2) ((The agency may not pay for any health care service, drug, supply or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service whose application for a core provider agreement (CPA) has been denied or terminated.~~

~~(3) The agency may not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service who does not have a current CPA with the agency when the agency determines there is a potential danger to a client's health and/or safety.~~

~~(4) Nothing in this chapter precludes the agency from entering into other forms of written agreements with a health care professional, health care entity, supplier or contractor of service.~~

~~(5)) If the agency denies an enrollment application under this section, the applicant may ((request that the agency reconsider the denial.~~

~~(a) The agency's decision at reconsideration is the agency's final decision.~~

~~(b) The agency reconsiders the applicant according to the process and guidelines outlined in subsections (1) through (4) of this section.~~

~~(c) The reconsideration process in this section is unrelated to the reconsideration process described in chapter 182-526 WAC)) reapply.~~

~~((+6))~~ (3) Under 42 C.F.R. 455.470, the agency:

(a) Will impose a temporary moratorium on enrollment when directed by CMS; or

(b) May initiate and impose a temporary moratorium on enrollment when approved by CMS.

AMENDATORY SECTION (Amending WSR 19-21-067, filed 10/11/19, effective 11/11/19)

WAC 182-502-0040 Termination of ((a)) provider ((agreement)) enrollment—For convenience. (1) Either the medicaid agency or the provider may terminate the provider's ((participation)) enrollment with the agency for convenience with ((thirty)) 28 calendar days written notice ((served upon the other party)) in a manner which provides proof of receipt or proof of valid attempt to deliver the notice.

(2) Termination((s)) of enrollment for convenience ((are not eligible for the dispute resolution process described in WAC 182-502-0050. Terminations for convenience are eligible for reconsideration as described in WAC 182-502-0012)) is the agency's final decision.

(3) If a provider is terminated for convenience, the agency pays for authorized services provided up to the date of termination only.

AMENDATORY SECTION (Amending WSR 13-17-047, filed 8/13/13, effective 10/1/13)

WAC 182-502-0050 Provider dispute of an agency action. The process described in this section applies only when agency rules allow a provider to dispute an agency decision under this section.

(1) In order for the agency to review a decision previously made by the agency, a provider must submit the request to review the decision:

(a) Within ((twenty-eight)) 28 calendar days of the date on the agency's decision notice;

(b) To the address listed in the decision notice; and

(c) In a manner that provides proof of receipt.

(2) A provider's dispute request must:

(a) Be in writing;

(b) Specify the agency decision that the provider is disputing;

(c) State the basis for disputing the agency's decision; and

(d) Include documentation to support the provider's position.

(3) The agency may request additional information or documentation. The provider must submit the additional information or documentation to the agency within ((twenty-eight)) 28 calendar days of the date on the agency's request.

(4) The agency closes the dispute without issuing a decision and with no right to further review under subsection (6) of this section when the provider:

(a) Fails to comply with any requirement of subsections (2), (3), and (4) of this section;

(b) Fails to cooperate with, or unduly delays, the dispute process; or

(c) Withdraws the dispute request in writing.

(5) The agency will send the provider a written notice of dispute closure or written dispute decision.

(6) The provider may request the director of the health care authority or designee to review the written dispute decision according to the process in WAC 182-502-0270.

(7) This section does not apply to disputes regarding overpayment. For disputes regarding overpayment, see WAC 182-502-0230 and chapter 182-502A WAC.

OTS-5656.1

AMENDATORY SECTION (Amending WSR 23-21-061, filed 10/12/23, effective 11/12/23)

WAC 182-502-0030 Termination of provider enrollment—For cause.

(1) The medicaid agency may immediately terminate a provider's enrollment for any one or more of the following reasons, each of which constitutes cause:

(a) Provider exhibits significant risk factors that endanger client health or safety. These factors include, but are not limited to:

(i) Moral turpitude;

(ii) Sexual misconduct according to chapter 246-16 WAC or in profession specific rules of the department of health (DOH);

(iii) A statement of allegations or statement of charges by DOH or equivalent from other state licensing boards;

(iv) Restrictions or limitations placed by any state licensing, credentialing, or certification agency on the provider's current credentials or practice;

(v) Limitations, restrictions, or loss of hospital privileges or participation in any health care plan or failure to disclose the reasons to the agency;

(vi) Negligence, incompetence, inadequate or inappropriate treatment, or lack of appropriate follow-up treatment;

(vii) Patient drug mismanagement, failure to identify substance use disorder, or failure to refer the patient for substance use disorder treatment once identified;

(viii) Use of health care providers or health care staff who are unlicensed to practice or who provide health care services that are outside their recognized scope of practice or the standard of practice in the state of Washington;

(ix) Failure of the health care provider to comply with the requirements of WAC 182-502-0016;

(x) Failure of the health care provider with a substance use disorder(s) to furnish documentation or other assurances as determined by the agency to adequately safeguard the health and safety of Washington apple health clients that the provider:

(A) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(B) Is receiving treatment adequate to ensure that the disorder will not affect the quality of the provider's practice.

(xi) Infection control deficiencies;

(xii) Failure to maintain adequate professional malpractice coverage;

(xiii) Medical malpractice claims or professional liability claims that constitute a pattern of questionable or inadequate treatment, or contain any gross or flagrant incident of malpractice; or

(xiv) Any other act that the agency determines is contrary to the health and safety of its clients.

(b) Provider exhibits significant risk factors that affect the provider's credibility or honesty. These factors include, but are not limited to:

(i) Failure to meet the requirements in WAC 182-502-0010 and 182-502-0020;

(ii) Dishonesty or other unprofessional conduct;

(iii) Civil or criminal findings of fraudulent or abusive billing practices through an investigation or other review (e.g., audit or record review);

- (iv) Exclusion from participation in medicare, medicaid, or any other federally funded health care program;
 - (v) Any conviction, no contest plea, or guilty plea relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
 - (vi) Any conviction, no contest plea, or guilty plea of a criminal offense;
 - (vii) Failure to comply with a DOH request for information or an ongoing DOH investigation;
 - (viii) Noncompliance with a DOH or other state health care agency's stipulation to disposition, agreed order, final order, or other similar licensure restriction;
 - (ix) Misrepresentation or failure to disclose information to the agency during or after enrollment including on the application for a core provider agreement (CPA), a nonbilling provider agreement, or servicing providers enrolled under a core provider agreement;
 - (x) Failure to comply with an agency request for information;
 - (xi) Failure to submit adequate documentation to the agency or failure to retain adequate documentation as required by the agency;
 - ~~(xii)~~ Failure to cooperate with an agency investigation, audit, or review;
 - ~~((~~xii~~))~~ (xiii) Providing health care services that are outside the provider's recognized scope of practice or the standard of practice in the state of Washington;
 - ~~((~~xiii~~))~~ (xiv) Unnecessary medical, dental, or other health care procedures;
 - ~~((~~xiv~~))~~ (xv) Discriminating in the furnishing of health care services, supplies, or equipment as prohibited by 42 U.S.C. § 2000d; and
 - ~~((~~xv~~))~~ (xvi) Any other dishonest or discreditable act that the agency determines is contrary to the interest of the agency or its clients.
- (2) If a provider's enrollment is terminated for cause, the agency pays only for authorized services provided up to the date of termination of enrollment if other program requirements are met including, but not limited to, the requirements in WAC 182-502-0016.
- (3) When the agency terminates enrollment of a servicing provider who is also a full or partial owner of an enrolled group practice, the agency terminates the enrolled group practice and all enrolled servicing providers who are not linked to another enrolled group practice contracted with the agency. The remaining practitioners in the group practice may reapply for participation with the agency subject to WAC 182-502-0010.
- (4) Effective date. The effective date of the termination of a provider's enrollment is the date stated in the notice. The filing of an appeal as provided in subsection (5) of this section does not stay the effective date of termination.
- (5) Administrative hearing.
- (a) The provider may appeal the agency decision to terminate the provider's enrollment for cause by submitting a written request to the address contained in the decision notice within 28 calendar days of the date on the notice and in a manner that provides proof of receipt by the agency. The agency does not allow good cause exception related to this subsection.
- (b) If the agency receives a timely appeal, the presiding officer will schedule a prehearing conference in accordance with WAC 182-526-0195.

(c) The administrative hearing process is governed by the Administrative Procedure Act, chapter 34.05 RCW, and chapter 182-526 WAC.

(d) Burden of proof.

(i) The provider has the burden of proof.

(ii) The standard of proof in a provider termination hearing is "clear and convincing evidence" meaning the evidence is highly and substantially more likely to be true than untrue. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

OTS-5657.1

AMENDATORY SECTION (Amending WSR 23-24-026, filed 11/29/23, effective 1/1/24)

WAC 182-502-0100 General conditions of payment. (1) The medic-aid agency (~~((reimburses for medical))~~) pays for health care services furnished to an eligible client when the claim satisfies agency rules including all the following ((apply)):

(a) The service is within the scope of care of the client's Washington apple health program;

(b) The service is medically necessary;

(c) The service is properly authorized;

(d) The provider bills within the time frame set in WAC 182-502-0150;

(e) The provider bills according to agency rules and billing instructions; and

(f) The provider follows third-party payment procedures.

(2) The agency pays claims only for health care services provided by or on behalf of a provider that is enrolled with the agency.

(3) In order for any services or supplies ordered, prescribed, or referred by a provider to be paid:

(a) The provider must be enrolled with the agency under their national provider identifier (NPI); and

(b) The NPI for the referring, prescribing, or ordering provider must be included on the claim form.

(4) If payment for services is to be made to a group practice, partnership, or corporation, the group, partnership, or corporation must enroll with the agency and provide its national provider identifier (NPI) (if eligible for an NPI) to be used for submitting claims as the billing provider.

(5) The agency is the payer of last resort, unless the other payer is:

(a) An Indian health service;

(b) A crime victims program through the department of labor and industries; or

(c) A school district for health services provided under the Individuals with Disabilities Education Act.

~~((3))~~ (6) The agency does not (~~((reimburse))~~) pay providers for ((medical)) health care services identified by the agency as client financial obligations, and deducts from the payment the costs of those services identified as client financial obligations. Client financial obligations include, but are not limited to, the following:

(a) Copayments (copays) (unless the criteria in chapter 182-517 WAC or WAC 182-501-0200 are met);

(b) Deductibles (unless the criteria in chapter 182-517 WAC or WAC 182-501-0200 are met); and

(c) Spenddown (see WAC 182-519-0110).

~~((4))~~ (7) The agency does not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier, or contractor of service not currently enrolled with the agency.

(8) The agency does not pay for services provided to clients during the application process for provider enrollment, regardless of whether the agency later approves or denies the application, unless an exception for earlier enrollment is approved by the agency in accordance with WAC 182-502-0005.

(9) The agency does not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier, or contractor of services whose application for enrollment has been denied or terminated.

(10) The provider must accept medicare assignment for claims involving clients eligible for both medicare and Washington apple health before the agency makes any payment.

~~((5))~~ (11) The provider is responsible for verifying whether a client has Washington apple health coverage for the dates of service.

~~((6))~~ (12) The agency may reimburse a provider for services provided to a person if it is later determined that the person was ineligible for the service when it was provided if:

(a) The agency considered the person eligible at the time of service;

(b) The service was not otherwise paid for; and

(c) The provider submits a request for payment to the agency.

~~((7))~~ (13) The agency does not pay on a fee-for-service basis for a service for a client who is enrolled in a managed care plan when the service is included in the plan's contract with the agency.

~~((8))~~ (14) Information about (~~medical care~~) health care services for jail inmates is found in RCW 70.48.130.

~~((9))~~ (15) The agency pays for medically necessary services on the basis of usual and customary charges or the maximum allowable fee established by the agency, whichever is lower.

WSR 24-17-110
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed August 19, 2024, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-034.

Title of Rule and Other Identifying Information: WAC 110-15-0215
Infant enhancement rate and 110-15-0249 Nonstandard hours bonus.

Hearing Location(s): On August 21 - September 24, 2024, at 11:59
p.m., telephonic. Comments can be made by calling 360-972-5385 and
leaving a voicemail that includes the comment or emailing the rules
coordinator. All comments must be received by the date and time listed
below.

Date of Intended Adoption: November 1, 2024.

Submit Written Comments to: Department of children, youth, and
families (DCYF) rules coordinator, email
dcyf.rulescoordinator@dcyf.wa.gov, [https://dcyf.wa.gov/practice/
policy-laws-rules/rule-making/participate/online](https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online).

Assistance for Persons with Disabilities: Contact DCYF rules co-
ordinator, phone 360-522-3691, email
dcyf.rulescoordinator@dcyf.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The early learning division is revising
the infant enhancement rate and nonstandard hours bonus rate to align
with requirements set forth in ESSB 5950, section 229, chapter 376,
Laws of 2024.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW
43.216.020, 43.216.065; ESSB 5950, section 229, chapter 376, Laws of
2024.

Statute Being Implemented: RCW 34.05.220, 43.216.020, and
43.216.065.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Christin
James, DCYF, Olympia, WA 98501, 360-688-0479; Implementation and En-
forcement: DCYF, statewide.

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(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 19, 2024
Brenda Villarreal
Rules Coordinator

OTS-5517.1

AMENDATORY SECTION (Amending WSR 22-12-072, filed 5/27/22, effective 7/1/22)

WAC 110-15-0215 Infant enhanced rate. Licensed and certified child care providers accepting state subsidy may receive an infant enhancement payment of (~~(\$90)~~) \$300 per month for each infant who is enrolled in their child care and attends at least one day per month.

AMENDATORY SECTION (Amending WSR 23-23-083, filed 11/13/23, effective 12/14/23)

WAC 110-15-0249 Nonstandard hours bonus. (1) Consumers' providers may receive a nonstandard hours bonus (NSHB) payment(~~(s)~~) per child per month for care provided if:

(a) The providers are licensed or certified;

(b) They provide at least 30 hours of nonstandard hours care during one month; and

(c) The total cost of the state's NSHB payments do not exceed the amount appropriated for this purpose by the legislature for the current fiscal year.

(2) Nonstandard hours are defined as:

(a) Before 6 a.m. or after 6 p.m.;

(b) Any hours on Saturdays and Sundays; and

(c) Any hours on legal holidays, as defined in RCW 1.16.050.

(3) NSHB amounts are:

(a) One hundred (~~(thirty-five)~~) fifty dollars for family homes;

and

(b) One hundred (~~(thirty-five)~~) fifty dollars for centers.

WSR 24-17-112

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed August 19, 2024, 9:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-020.

Title of Rule and Other Identifying Information: Discrimination and Title IX violations by students, chapter 172-125 WAC.

Hearing Location(s): On September 27, 2024, at 12:00 p.m., at 215A Tawanka Commons, Cheney, WA 99004.

Date of Intended Adoption: October 25, 2024.

Submit Written Comments to: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, email ascharosch@ewu.edu, website <https://inside.ewu.edu/policies>, beginning August 20, 2024, by September 30th at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email ascharosch@ewu.edu, by September 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provisions regarding complaints of discrimination and Title IX violations by students (including sexual harassment, sexual assault, interpersonal violence, and stalking) are removed from the student conduct code, chapter 172-121 WAC, and placed in their own chapter. This chapter is intended to comply with relevant federal laws, such as Title VI, Title IX, and the Americans with Disabilities Act (ADA). It is also intended to provide a more comprehensive and succinct description of how these situations are handled. As identified in chapter 172-108 WAC, Eastern Washington university (EWU) declines to adopt the model rules of procedure issued by the office of administrative hearings. Instead, these rules are designed to emphasize the educational nature of the university community and to provide a prompt and equitable process for resolving concerns consistent with the requirements of Title VI and Title IX.

Reasons Supporting Proposal: These changes are being made to make the student conduct process more understandable for students, provide greater support to students who are experiencing discrimination, and comply with updated regulations issued by the United States Department of Education.

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

Rule is necessary because of federal law, Title VI of the Civil Rights Act of 1964, 42 U.S.C. section 2000d et seq.; Title IX of the Education Amendments of 1972, 20 U.S.C. section 1681 et seq.; Section 504 of the Rehabilitation Act of 1973; Americans with Disability Act of 1990, 42 U.S.C. section 12101 et seq.; chapter 28B.112 RCW, Campus sexual violence.

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, 509-359-6724; and Enforcement: Dr. Shari McMahan, 214 Showalter Hall, Cheney, WA 99004, 509-359-6200.

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. Not subject to 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(4).
 Scope of exemption for rule proposal:
 Is fully exempt.

August 19, 2024
 Annika Scharosch
 Associate Vice President for Civil Rights
 Compliance and Business Services

OTS-5550.1

**Chapter 172-125 WAC
 DISCRIMINATION AND TITLE IX VIOLATIONS BY STUDENTS**

PART I: COMMITMENT TO NONDISCRIMINATION

NEW SECTION

WAC 172-125-010 Commitment to nondiscrimination and standards of conduct for students. Eastern Washington University (EWU) is committed to equity and justice, and respect for the rights and dignity of all people. EWU is committed to providing a learning, living, and working environment free from discrimination and harassment. To fulfill these commitments, this code prohibits students and student organizations from engaging in discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct, or retaliation. This code sets forth the expectations for EWU student and student organization behavior and the process for addressing potential violations of the following standards of conduct. More specifically, students and student organizations are prohibited from engaging in:

(1) **Discrimination.** Adverse treatment of another individual because of the person's protected status or perception of a person's protected status. "Protected status" includes race, color, creed, religion, national origin, citizenship or immigration status, sex, pregnancy, sexual orientation, gender identity/expression, genetic information, age, marital status, families with children, protected veteran or military status, HIV or hepatitis C, status as a mother breastfeeding her child, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability. Individuals and student organizations may be treated differently on the basis of sex only to the extent permitted by Title IX and the Washington Law Against Discrimination.

(2) **Discriminatory harassment.** Physical or verbal conduct that:

(a) Denigrates or shows hostility toward an individual because of their protected status (as defined above) or perceived protected status;

(b) Is subjectively and objectively offensive; and

(c) Is sufficiently severe or pervasive as to unreasonably interfere with an individual's academic or work performance, or ability to participate in or benefit from the university's programs and activities.

(3) **Interpersonal violence.** Interpersonal violence encompasses domestic violence, dating violence, and stalking. These terms are defined as:

(a) **Domestic violence:** Any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual relationship, are current or former family members, or adult persons who presently reside together. This includes, but is not limited to, physical abuse, threats of bodily harm or safety, or coercive control. Coercive control is: (i) A pattern of behavior used to cause another to suffer physical, emotional, or psychological harm; (ii) and is intended to or has the effect of unreasonably interfering with a person's free will and personal liberty. Examples of coercive control are identified in RCW 7.105.010(4).

(b) **Dating violence:** Is domestic violence as defined above except the acts are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(i) The length of time the relationship has existed;

(ii) The type of relationship; and

(iii) The frequency of interaction between the parties involved in the relationship.

(c) **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

(4) **Sex-based harassment.** Harassment on the basis of a person's sex, sex stereotypes, sex characteristics, sexual orientation, gender identity/expression, or pregnancy or related conditions, that meets one of the following standards:

(a) **Hostile environment:** Unwelcome sex-based conduct that, based on the totality of the circumstances, is:

(i) Subjectively and objectively offensive; and

(ii) So severe or pervasive that it created a hostile environment by limiting or denying a person's ability to participate in or benefit from the university's programs or activities.

In determining whether or not such an environment exists, the university will consider: (A) The degree to which the conduct affected the complainant's ability to access university's programs or activities; (B) the type, frequency, and duration of the conduct; (C) the parties' ages, roles within the university, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; (D) the location of the conduct and the context in which the conduct occurred; and (E) other sex-based harassment in the university's programs or activities. These are factors for consideration; each factor does not need to be met for a hostile environment to exist.

(b) **Quid pro quo harassment:** If a student is working as a university employee or otherwise has the authority to offer benefits or service to students, sex-based harassment exists if the respondent explicitly or impliedly conditioned the provision of such benefit or service on the complainant's participation in unwelcome sexual conduct.

(5) **Sexual assault.** Any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence, any form of coercion, or physical or psychological intimidation. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(a) **Rape:** The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(b) **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the person's consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(c) **Sodomy:** Oral or anal sexual intercourse with another person, without the complainant's consent.

(d) **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(e) **Statutory rape:** Sexual intercourse with a person who is under the age of consent as defined by state law.

(6) **Sexual misconduct.** Other forms of inappropriate sexual misconduct include indecent liberties; indecent exposure; sexual exhibitionism; prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; sharing nude images of another without their permission; sextortion; or going beyond the boundaries of consent, such as allowing others to view consensual sex or the nonconsensual recording of sexual activity.

(7) **Retaliation.** Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights or privileges under this code, or because a person has reported information, made a complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, informal resolution, or hearing under this code is prohibited. Any actual or threatened retaliation is prohibited and is a separate violation of this code. If the complainant or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation.

Additional standards for student conduct are contained in the student conduct code, chapter 172-121 WAC, and the academic integrity code, chapter 172-90 WAC. Standards for employees are contained in university policy.

NEW SECTION

WAC 172-125-020 Scope and jurisdiction. EWU shall have jurisdiction over student behavior which occurs on EWU premises or during an EWU-sponsored program or activity. EWU may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects EWU or an EWU community member. EWU has sole discretion in determining what conduct adversely impacts EWU or an EWU community member.

This code shall apply to conduct without regard to a student's academic status at the time the conduct took place. It applies to all conduct occurring on or after August 1, 2024. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods, breaks in enrollment, or outside of normal business hours. The university may continue a student conduct process even after a student withdraws or graduates. The term "student" is further defined in WAC 172-125-300.

NEW SECTION**WAC 172-125-030 Reporting, resources, and supportive measures.**

(1) **Reporting.** Individuals who believe a student or student organization has engaged in discrimination, harassment, sexual assault, sexual misconduct, or retaliation may report such concerns to any of the following offices:

- (a) Civil rights office (www.inside.ewu.edu/civilrights);
- (b) Title IX coordinator (www.inside.ewu.edu/titleix); or
- (c) Student rights and responsibilities (www.inside.ewu.edu/srr).

This code refers to people who were directly negatively impacted by conduct in violation of this code as "complainants" regardless of whether or not they file a formal complaint with EWU.

(2) **Initial meeting.** After receiving a report, the Title IX coordinator, student accommodations and support services, or their designees will promptly reach out to the complainant, which may or may not be the same as the reporting party, to provide information about EWU's process, their rights, reporting options, resources, and available supportive measures. This will include information about:

(a) **Reporting options:** EWU encourages people to report incidents of discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct or retaliation. Complainants have the choice as to whether or not they would like to file a complaint with EWU and/or law enforcement. People can file a complaint, with the help of the Title IX coordinator upon request, with EWU or with local law enforcement, or both, using one of the following options:

(i) EWU process: Complaints may be filed with the Title IX coordinator. This includes complaints against EWU students, employees, contractors, vendors, volunteers, and visitors.

(ii) Criminal: Criminal complaints can be filed with the EWU police department or any law enforcement agency that has jurisdiction over the location where the incident occurred.

(iii) Both: A complainant may report an incident to both EWU and law enforcement.

(b) **Resources:** Complainants will be provided with information about university and community resources relevant to the particular concern, including:

(i) A list of resources for obtaining protective, no contact, restraining, or similar orders;

(ii) How to seek medical treatment, the importance of preserving evidence relevant to the alleged conduct or that may be helpful in obtaining a protective order, and procedures to follow to preserve such evidence; and

(iii) A list of existing on and off campus counseling, health care services, mental health services, victim advocacy, financial aid, legal assistance, visa and immigration assistance, and other services for complainants and respondents;

(c) **Overview of EWU's discrimination and Title IX processes:** Information will also be provided about EWU's process for responding to complaints under this code, including:

(i) Importance of preserving evidence that may assist in investigation of the incident or that may be helpful in obtaining a protection order;

(ii) EWU's policies regarding the confidentiality of complaints;

(iii) How to request supportive measures;

(iv) EWU's investigative and hearing process, including who will receive a copy of the investigative report;

(v) Options for informal resolution; and

(vi) EWU's prohibition against retaliation and how to report retaliation.

(3) **Supportive measures.** After receiving a report of discrimination, the Title IX coordinator or designee will review the complaint and determine whether or not supportive measures or interim restrictions are needed. Supportive measures are available for all students and employees regardless of whether someone wants to file a complaint. Requests for supportive measures may be directed to student accommodations and support services or the Title IX coordinator. Supportive measures may be in place before a complaint is filed, during the investigation and decision-making process, informal resolution process, and/or after the final determination of responsibility. Supportive measures are also available for both complainants and respondents.

Supportive measures are provided by EWU free of charge and may include, but are not limited to, safety planning with EWU, mutual restrictions on contact between the parties, academic or workplace modifications, leaves of absence, increased security, counseling options on campus, or campus housing modifications. Supportive measures are designed to restore or preserve equal access to EWU's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and EWU's educational environment, or deterring sexual misconduct or discrimination. Supportive measures may be provided for a specific period of time or throughout the remainder of a student's time at EWU.

If a complainant or respondent disagrees with the supportive measures determination, they may file a written appeal with the dean of students within 10 calendar days of the determination by emailing dos@ewu.edu. The dean of students, or designee, may affirm, modify, or reverse the supportive measures determination. Such decision shall be served on the appealing party in writing. If a student's circumstances change materially, they may request new or additional supportive measures.

Supportive measures are confidential and will only be shared with those people who need to know such information to enable EWU to provide the supportive measures. The Title IX coordinator or designee is responsible for coordinating the effective implementation of suppor-

tive measures. All supportive measures should be documented and retained for seven years. If supportive measures are not provided, EWU must document the reasons why such measures were not needed.

(4) **Confidentiality.** Information gathered during an investigation and adjudication of a complaint under this code will be maintained in a confidential manner to the extent permitted by law. During an investigation, complaint information will be disseminated only on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crime to the campus community, timely warnings, and EWU's annual security report shall not include the names of the complainants or victims. Files subject to public disclosure will be released to the extent required by law.

The university will not require a complainant or respondent to abide by a nondisclosure agreement that would prevent the redisclosure of information related to an investigation or disciplinary action under this policy.

NEW SECTION

WAC 172-125-040 Complaints. (1) Filing of complaints.

(a) **Who can file a complaint.** Complaints can be filed by anyone who has been directly impacted by conduct that violates this code or by such person's authorized legal representatives, such as a minor's parent or legal guardian. The Title IX coordinator can also file a complaint against a student or student organization on behalf of the university. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(b) **How to file a complaint.** To initiate a complaint, a person must submit a request for the university to investigate their concerns either verbally or in writing to the Title IX coordinator or designee. Complaints must be filed in good faith.

(c) **Other complaint options.** Filing a complaint under this code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) **Student conduct code violations.** All complaints against students that do not fall within the scope of this code will be forwarded to student rights and responsibilities for further review and action under the student conduct code, chapter 172-121 WAC.

(2) **Complaint review and dismissal/referral.** Upon receipt of a complaint, the Title IX coordinator shall review the complaint to determine whether it includes allegations of violations of this code and to determine which process applies within 14 calendar days of receiving such complaint. This time may be extended if the Title IX coordinator needs additional information to make such determination or if there is an active criminal investigation. If a complaint falls within the scope of this code, it shall be addressed in accordance with the

procedures below and the Title IX coordinator shall determine whether or not the Level One Process or Level Two Process applies. If the complainant or respondent has requested informal resolution, the Title IX coordinator will determine whether or not informal resolution is appropriate and, if so, refer the matter to the person designated to handle informal resolutions. If the complaint falls outside of the scope of this code, it shall be referred to the office of student rights and responsibilities for review under the student conduct code, chapter 172-121 WAC.

Additionally, even if a complaint falls within the scope of this code, the Title IX coordinator may dismiss the complaint if:

(a) EWU is unable to identify the respondent after taking reasonable steps to do so;

(b) The respondent is not a student or student organization. Complaints against university employees, volunteers, contractors, and program participants are handled under EWU policy and are outside of the scope of this code;

(c) The complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX coordinator declines to initiate a complaint on behalf of the university, and, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not meet the definition of discrimination, discriminatory harassment, sexual assault, sexual misconduct, interpersonal violence, or retaliation under this code even if proven; or

(d) The conduct alleged in the complaint, even if substantiated by a preponderance of the evidence, would not constitute a violation of this code. Prior to making this determination, the Title IX coordinator or investigator must make reasonable efforts to clarify the allegations with the complainant.

The Title IX coordinator will inform the complainant in writing of the reason for dismissing the complaint. If the respondent has already received a notice of investigation, the respondent will also be simultaneously served with notice of the dismissal and the reasons for the dismissal.

Even if a complaint is dismissed, the complainant will be offered supportive measures. If the respondent has already been notified, the respondent will also be offered supportive measures. The Title IX coordinator will also take other appropriate prompt and effective steps to ensure that discrimination does not continue or recur within EWU programs or activities.

The Title IX coordinator may consolidate complaints under this code when the allegations of discrimination, harassment, interpersonal violence, sexual assault, sexual misconduct, or retaliation arise out of the same facts or circumstances. When more than one complaint is involved, all references to the "complainant" throughout this code include all individuals who have filed a complaint against the respondent that are consolidated into one investigation.

(3) **Informal resolution.** If a complainant and respondent are both interested in informal resolution and the Title IX coordinator determines informal resolution is appropriate, EWU will follow the process identified in WAC 172-125-200.

(4) **Appeal of dismissal.** If the complainant or respondent disagrees with the Title IX coordinator's decision to dismiss a complaint, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision by emailing such

appeal to dos@ewu.edu. Appeals may be filed for one or more of the following reasons:

- (a) Procedural irregularity that would change the outcome of the Title IX coordinator's decision;
- (b) New evidence that would change the Title IX coordinator's decision that was not reasonably available when the dismissal was made; or
- (c) The Title IX coordinator or designee had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome.

If the respondent has not been notified of the complaint prior to the dismissal, the respondent will not be notified of the dismissal or appeal. If the respondent has been notified of the complaint, the respondent will also be provided with notice of the dismissal and given the same opportunity to appeal the determination. They will also receive notice if the complainant appeals. If one party appeals and the other party is entitled to notice, the other party will be given notice of the appeal and three calendar days to provide a response to the appeal. The dean of students or designee can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be served in writing simultaneously to the parties who participated in the appeal.

(5) **Interim restrictions.** The Title IX coordinator or designee will also determine whether or not interim restrictions are needed after conducting an individualized safety and risk determination in conjunction with other EWU officials. Interim restrictions must be in place in situations where there is cause to believe that a student or a student organization poses an imminent and serious threat to the health or safety of any student or other individual arising from the alleged misconduct, including themselves. After interim restrictions are imposed, the complaint will be referred for investigation under this code.

(a) Interim restrictions may include, but are not limited to:

- (i) Denial of access to certain areas, assignment to alternate university housing or removal from university housing, limitation of access to university facilities, limitations on engaging in certain activities, or restriction of communication with specific individuals or groups;
- (ii) Interim suspension, including temporary total removal from the university or restriction of access to campus;
- (iii) Mandatory medical/psychological assessment of the student's capability to remain in the university; or
- (iv) Administrative leave for student employees.

(b) The Title IX coordinator or investigator will issue a notice identifying the interim restrictions that will be served on the restricted student. At minimum, the notice will include:

- (i) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;
- (ii) How those alleged act(s) or behavior(s) could constitute a violation of this code;
- (iii) How the circumstances of the case necessitated the interim restriction action(s); and
- (iv) An explanation of the process for emergency appeal reviews.

(c) The complainant will also be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a

statement within five calendar days of the notice as to why the interim restriction should or should not be modified.

(d) Emergency appeal review.

(i) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within five calendar days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within five calendar days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to whether or not there is adequate cause to believe a student or a student organization poses an imminent and serious threat to the health or safety of any student or other individual. Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator during the investigative process.

(ii) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the Title IX coordinator and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular investigative process. In the emergency appeal review, the vice president will only review materials available to and information considered by the Title IX coordinator at the time the interim restriction was imposed, written statements by the two parties, and information that becomes available as a part of the university's investigation that the vice president deems relevant.

(iii) If a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five calendar days of receiving notice of the complainant's appeal.

(iv) During the emergency appeal review, the vice president for student affairs will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction decision. The written decision shall include a rationale for the basis of the decision and be served within 14 calendar days of the date all appeal materials were submitted.

(v) The interim restriction does not replace the regular investigative process, which will proceed as quickly as feasible consistent with this code.

(e) Duration. An interim restriction will remain in effect until terminated, in writing, by a decision-maker following the Level One or Level Two processes outlined in this code or following a timely appeal of the restriction.

PART II: RESOLUTION OPTIONS AND GRIEVANCE PROCEDURESNEW SECTION

WAC 172-125-200 Informal resolution. (1) **Referral.** The Title IX coordinator or investigator may refer any report or complaint to the informal resolution process. It is not necessary that a formal complaint be filed for a report to be referred to this process. A report/complaint may be referred to the informal resolution process at any time prior to the completion of an investigation. The Title IX coordinator may determine informal resolution is not appropriate, even if requested by both parties, if the alleged conduct could present a future risk of harm to others.

(2) **Voluntary participation.** Informal resolution processes may include a variety of voluntary processes that are structured to facilitate dialogue between impacted parties while balancing support and accountability. The various types of informal resolution options available at EWU and procedures for resolution are available on the EWU Title IX website. In all cases, the impacted parties must agree in writing to participate in the informal process and EWU will not require or pressure a party to participate in the informal process. A party is not required to waive the right to an investigation and/or hearing to participate in this process.

(3) **Informal resolution officer.** Informal resolutions will be handled by an EWU employee who is trained to facilitate such processes. In no case will the informal resolution officer be the same person as the investigator or any EWU employee who will make a decision regarding the complaint if informal resolution is not successful. The informal resolution officer must also not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

(4) **Written information about the process.** Before beginning the informal resolution process, EWU will provide both parties with the following information in writing:

- (a) Summary of the alleged conduct;
- (b) The requirements of the informal resolution process;
- (c) Notice that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the investigative process;
- (d) That the parties' agreement to a resolution at the conclusion of the informal resolution process will preclude the parties from initiating or resuming a formal complaint process arising from the same allegations;
- (e) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- (f) What information EWU will maintain and whether and how EWU might use such information if the formal complaint process is initiated or resumed.

(5) **Options for resolution.** Potential terms that may be included in an informal resolution agreement include, but are not limited to:

- (a) Restrictions on contact;
 - (b) Restrictions on the respondent's participation in university programs or activities or attendance at specific events;
 - (c) Training; or
 - (d) Any other terms the parties agree upon that the informal resolution officer deems appropriate.
- (6) **Written agreement.** Any informal resolution agreement must be in writing and signed by the parties and the informal resolution officer. In the agreement, the parties must be advised in writing that:
- (a) The agreement is final, and they are waiving any right to a formal complaint process, including any right to appeal; and
 - (b) If a student does not successfully complete all aspects of an agreement, they may be charged with failure to comply under the student conduct code, chapter 172-121 WAC, and/or any possible violation of this code for the conduct that was the basis for the informal resolution.
- (7) **Referral back to the formal complaint process.** If any party decides to leave the informal resolution process or the informal resolution officer determines the process is no longer appropriate, then the matter shall be referred back to the Title IX coordinator to determine the next steps under this code.

NEW SECTION

WAC 172-125-210 Level one process. (1) **Applicability.** The Level One Process applies to all violations of this code that do not involve felony-level crimes or that would not result in the suspension or expulsion of a student. If the alleged misconduct could constitute a felony-level crime or result in a student's suspension or expulsion, it must be referred to the Level Two Process outlined in WAC 172-125-220. The Level One Process is considered a brief adjudicative proceeding pursuant to RCW 34.05.482.

If the alleged conduct could constitute a violation of this code and the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level One Process outlined in this code may be used to determine violations of this code and the student conduct code in lieu of having two separate proceedings. The investigator will determine whether or not to include violations of either code as documented in the notice of investigation and allegations.

(2) **Notice of investigation and allegations.** If the Title IX coordinator refers a complaint to investigation, the Title IX coordinator will assign an investigator to conduct an investigation. The investigator will serve the respondent and complainant with a notice of investigation and allegations that meets the following requirements:

- (a) Is made in writing;
- (b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code and the student conduct code allegedly violated;
- (c) Contact information for the investigator;
- (d) Parties' rights during the process, including:
 - (i) Right to a fair and equitable process.

- (ii) Right to have investigators and decision-makers that do not have a conflict of interest or bias against the parties.
 - (iii) Right to remain silent during the investigation.
 - (iv) Right to have an advisor of their choice, at their cost, during the process. The advisor may be, but is not required to be, an attorney. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf.
 - (v) Right to request the investigator ask questions of the other party (cross-examination).
 - (vi) Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the investigative process.
 - (vii) Right to request an accommodation or interpreter for the process.
 - (e) Information about the investigative process and, if applicable, informal resolution;
 - (f) A statement that complainants, respondents, and witnesses are prohibited from knowingly making false statements or furnishing false information during the process. A person will not be disciplined for making a false statement based solely on whether or not EWU determines a complaint under this code is substantiated.
 - (g) EWU's prohibition on retaliation and how to report acts of retaliation;
 - (h) Information about how the parties will be provided an equal opportunity to access relevant information gathered during the investigation; and
 - (i) Information about supportive measures and resources available to both parties.
- (3) **Investigative process.** During the investigation, the investigator is responsible for gathering sufficient evidence to determine whether or not this code has been violated. The investigator has discretion in determining the formality, scope, and process of the investigation. If additional allegations are discovered during the course of the investigation, the investigator shall issue an updated notice of investigation. Before scheduling an interview with a complainant or respondent, the investigator must provide the party with written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare. The investigative process must include:
- (a) Contacting the complainant to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional information and clarification. If the investigator is not able to obtain sufficient information or if the complainant withdraws the complaint during the investigative process, the investigator may refer the complaint back to the Title IX coordinator to determine whether or not dismissal is appropriate.
 - (b) Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.).
 - (c) Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence. Witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may identify fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to provide information from an expert witness, the party is responsible for any costs associated with the expert witness.

(e) The investigator must have the ability to question parties and witnesses to assess their credibility to the extent credibility is both in dispute and relevant. The investigator may ask questions during individual meetings with a party or witness. The investigator must also allow each party to propose questions that the party wants asked of any party or witness. The investigator will then ask those questions of the party/witness, subject to the limits below, during an individual meeting and will provide each party with an audio or audiovisual recording or transcript of the investigative interview with enough time for the party to have a reasonable opportunity to propose follow-up questions. The investigator may determine a proposed question is not relevant or is otherwise impermissible and must explain their decision to exclude a question in the investigative report. If the party's proposed question is relevant and not otherwise impermissible, then the question must be asked unless the question is unclear or harasses the party or witnesses being questioned. If the investigator believes the question is unclear or harassing, they must give the proposing party an opportunity to clarify or revise the question.

(f) The investigator may choose to place less or no weight upon statements by a party or witness who refuses to respond to the investigator's questions. The investigator, however, must not draw an inference about whether or not this code was violated based solely on a party's or witness's refusal to respond to the investigator's questions.

(g) After gathering the relevant evidence, the investigator must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is relevant to the allegations raised in the complaint and not otherwise impermissible. The investigator must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the Level One Process.

(h) The investigation shall not include evidence nor shall any information provided be disclosed to another person if such information:

(i) Is evidence protected under a legal privilege recognized by federal or state law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless EWU obtains that party's or witness's voluntary, written consent for use of the information in the investigation;

(iii) Information about the complainant's sexual predisposition or prior sexual behavior, unless the evidence is relevant to demonstrate that someone other than the respondent committed the conduct alleged by the complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is relevant to the question of consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent in the incident under investigation.

(4) Investigative report and determinations of responsibility.

(a) After gathering the relevant evidence, the investigator must objectively evaluate the information gathered and determine the credibility of the parties. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The investigator will prepare an investigative report that accurately summarizes the information gathered and makes determinations on whether or not this code or the student conduct code has been violated based on a preponderance of the evidence, meaning it is more probable than not that an act occurred.

(b) If the investigator determines the respondent has not violated this code or any provision of the student conduct code, the investigator will simultaneously serve the investigative report on the complainant and respondent along with information about how to appeal the investigator's decision.

(c) If the investigator determines the respondent has violated this code or any provision of the student conduct code, the investigator will send the investigative report to the director of student rights and responsibilities. The director or director's designee will then determine the appropriate sanction for the misconduct substantiated by the investigator within seven calendar days of receiving the investigative report. The director will also determine whether or not remedies for the complainant or other impacted students are appropriate. Remedies must be provided to the complainant or other impacted students if needed to restore or preserve equal access to the university's educational programs or activities. The director or designee will add an additional section to the investigative report setting forth their decision as to the appropriate sanction and the reasons for their decision. The director or designee will then simultaneously serve the full investigative report and sanctioning decision on the complainant and respondent along with information about how to appeal the investigator and director's decisions. In addition to sanctions under this code, if the student is also an employee of the university, the director's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with the university policy.

(5) **Timelines and extensions.** EWU must respond to complaints under this code in a prompt and equitable manner. To assist EWU in reaching this goal, this code includes various timelines. EWU's goal is to complete investigations within 90 days. If EWU needs additional time, the investigator must provide written notice to the complainant and respondent of the delay and reasons for the delay. Delays and extensions beyond 90 days must be based on good cause.

(6) **Appeals.**

(a) **Timeline.** Either party may file an appeal from the investigator's decision regarding responsibility or the director's decision regarding the sanction. Appeals must be submitted in writing by 5:00 p.m. PST within 21 calendar days from the date the investigative report is sent to the parties. Appeals must be submitted via email to srr@ewu.edu. The appeal must include the party's name and why they believe the investigator or director's decision was incorrect based on the bases for appeal outlined below. If no appeal is timely filed, the investigator/director's decisions are final.

(b) **Basis for appeal.** Appeals may be filed for one or more of the following reasons:

(i) Procedural irregularity that would change the outcome of the investigator or director's decisions;

(ii) New evidence that would change the investigator's decision that was not reasonably available when the investigative report was finalized; or

(iii) The investigator or director had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome of the investigation.

(c) Once an appeal is filed, the office of student rights and responsibilities will serve the other party with a copy of the appeal. The other party will be given five calendar days to provide a written response to the appeal.

(d) Stay of sanctions. Sanctions go into effect immediately after the director's decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed along with the notice of appeal. The request for the stay will be reviewed by the director or designee. The stay may be granted in part or in its entirety, at the discretion of the director. The decision will be served on the respondent and the complainant. This decision is not subject to appeal.

(e) Appeals will be determined by the dean of students or designee. The director will provide the appeal authority with the notice of appeal, any responses to the appeal, and the investigative report. Before rendering a decision, the appeal authority may request additional information or explanation from the parties. However, except as required to explain the basis of new information, an appeal shall be limited to a review of the investigative report.

(f) After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the investigator and/or director. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be served on the complainant and respondent within 30 calendar days of the appeal authority receiving all necessary documentation. In cases where the appeal authority remands the decision or sanction, the case will be returned to either the investigator or director for reconsideration or other action as specified by the appeal authority. With respect to sanctions, the appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(g) Notification. Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall draft a brief written statement setting forth the outcome of the appeal and the basis for their decision. This is then forwarded to the director. The director shall serve the written statement on the complainant and respondent. The notice will also inform the parties that the appeal authority's decision is final and no further appeals may be made within the university. Judicial review of the university's decision may be available under chapter 34.05 RCW.

NEW SECTION

WAC 172-125-220 Level two process. (1) **Applicability.** The Level Two Process applies to all violations of this code that involve felony-level crimes or that may result in the suspension or expulsion of a student. If any of the alleged misconduct could constitute a felony-

level crime or result in a student's suspension or expulsion, it must be referred to the Level Two Process outlined in this section. The Level Two Process is considered a full adjudicative proceeding pursuant to chapter 34.05 RCW.

If the alleged conduct could constitute a violation of this code and a violation of the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level Two Process outlined in this code may be used to determine violations of this code and the student conduct code in lieu of having two separate proceedings. The investigator will determine whether or not to include violations of either code as documented in the notice of investigation and allegations.

(2) **Notice of investigation and allegations.** If the Title IX coordinator refers a complaint to investigation under the Level Two Process, the Title IX coordinator will assign an investigator to conduct an investigation. The investigator will serve the respondent and complainant with a notice of investigation and allegations that meets the following requirements:

- (a) Is made in writing;
- (b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code and the student conduct code allegedly violated;
- (c) Contact information for the investigator;
- (d) Parties' rights during the process, including:
 - (i) Right to a fair and equitable process.
 - (ii) Right to have investigators and decision-makers that do not have a conflict of interest or bias against the parties.
 - (iii) Right to remain silent during the investigation.
 - (iv) Right to have an advisor of their choice, at their cost, during the process. The advisor may be, but is not required to be, an attorney. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf.
 - (v) Right to request the investigator ask questions of the other party (cross-examination).
 - (vi) Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the investigative process.
 - (vii) Right to request an accommodation or interpreter for the process.
- (e) Information about the investigative process and, if applicable, informal resolution;
- (f) A statement that complainants, respondents, and witnesses are prohibited from knowingly making false statements or furnishing false information during the process. A person will not be disciplined for making a false statement based solely on whether or not EWU determines a complaint under this code is substantiated;
- (g) EWU's prohibition on retaliation and how to report acts of retaliation;
- (h) Information about how the parties will be provided an equal opportunity to access relevant information gathered during the investigation; and
- (i) Information about supportive measures and resources available to both parties.

(3) **Investigative process.** During the investigation, the investigator is responsible for gathering sufficient evidence to determine whether or not this code has been violated. The investigator has discretion in determining the formality, scope, and process of the investigation. If additional allegations are discovered during the course of the investigation, the investigator shall issue an updated notice of investigation. Before scheduling an interview with a complainant or respondent, the investigator must provide the party with written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare. The investigative process must include:

(a) Contacting the complainant to review the complaint, gather more information, and identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional information and clarification. If the investigator is not able to obtain sufficient information or if the complainant withdraws in writing the complaint during the investigative process, the investigator may refer the complaint back to the Title IX coordinator to determine whether or not dismissal is appropriate. Any withdrawal must be in writing.

(b) Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.).

(c) Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence. Parties and witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may present fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to present information from an expert witness, the party is responsible for any costs associated with the expert witness.

(e) The investigator must have the ability to question parties and witnesses to assess their credibility to the extent credibility is both in dispute and relevant. The investigator may ask questions during individual meetings with a party or witness. The investigator must also allow each party to propose questions that the party wants asked of any party or witness. The investigator will then ask those questions of the party/witness, subject to the limits below, during an individual meeting and will provide each party with an audio or audiovisual recording or transcript of the investigative interview with enough time for the party to have a reasonable opportunity to propose follow-up questions. The investigator may determine a proposed question is not relevant or is otherwise impermissible and must explain such decision to exclude a question in the investigative report. If the party's proposed question is relevant and not otherwise impermissible, then the question must be asked unless the question is unclear or harasses the party or witnesses being questioned. If the investigator believes the question is unclear or harassing, they must give the proposing party an opportunity to clarify or revise the question.

(f) The investigator may choose to place less or no weight upon statements by a party or witness who refuses to respond to the investigator's questions. The investigator, however, must not draw an inference about whether or not this code was violated based solely on a party's or witness's refusal to respond to the investigator's questions.

(g) After gathering the relevant evidence, the investigator must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is relevant to the allegations raise in the complaint and not otherwise impermissible. The investigator must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the Level Two Process.

(h) The investigation shall not include evidence nor shall any information provided be disclosed to another person if such information:

(i) Is evidence protected under a legal privilege recognized by federal or state law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless EWU obtains that party's or witness's voluntary, written consent for use of the information in the investigation;

(iii) Information about the complainant's sexual predisposition or prior sexual behavior, unless the evidence is relevant to demonstrate that someone other than the respondent committed the conduct alleged by the complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is relevant to the question of consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent in the incident under investigation.

(4) Investigative report and determinations of responsibility.

(a) After gathering the relevant evidence, the investigator must objectively evaluate the information gathered and determine the credibility of the parties. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The investigator will prepare an investigative report that accurately summarizes the information gathered and makes determinations on whether or not this code or the student conduct code has been violated based on a preponderance of the evidence.

(b) If the investigator determines the respondent has not violated this code or any provision of the student conduct code, the investigator will simultaneously serve the complainant and respondent with the investigative report along with information about how to appeal the investigator's decision.

(c) If the investigator determines the respondent has violated this code or any provision of the student conduct code, the investigator will send the investigative report to student rights and responsibilities. The director or director's designee will then determine the appropriate sanction for the misconduct substantiated by the investigator within seven calendar days of receiving the investigative report. The director will also determine whether or not remedies for the complainant or other impacted students are appropriate. Remedies must be provided to the complainant or other impacted students if needed to restore or preserve equal access to the university's educational programs or activities. The director or designee will add an additional section to the investigative report setting forth their decision as to the appropriate sanction and the reasons for their decision. The director or designee will then simultaneously serve the complainant and respondent with the full investigative report and sanctioning deci-

sion, along with information about how to appeal the investigator and director's decisions. In addition to sanctions under this code, if the student is also an employee of the university, the director's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

(5) **Timelines and extensions.** EWU must respond to complaints under this code in a prompt and equitable manner. To assist EWU in reaching this goal, this code includes various timelines. EWU's goal is to have investigations completed within 90 days. If the university needs additional time, the investigator must provide written notice to the complainant and respondent of the delay and reasons for the delay. Delays and extensions beyond 90 days must be based on good cause.

(6) **Initial appeal to student disciplinary council.** If either party disagrees with the decision of the investigator or director, they may request a full de novo hearing by filing a request for hearing with the office of student rights and responsibilities. The request for hearing must be sent in writing to srr@ewu.edu by 5:00 p.m. PST within 21 calendar days from the date the investigative report is sent to the parties. If a timely request for hearing is received, the director will refer the case to a full hearing before the student disciplinary council under WAC 172-125-230.

NEW SECTION

WAC 172-125-230 Full hearings before the student disciplinary council. (1) **Appointment of council.** When a student disciplinary council is needed for a full hearing following a request for a full hearing under the Level Two Process, the Title IX coordinator or dean of students shall appoint a presiding officer and members to serve on the council consistent with the procedures for appointing a council under the student conduct code, chapter 172-121 WAC. Full hearings are determined by a majority vote of the council and are conducted de novo.

(2) **Prehearing.** Following receipt of a timely request for a full hearing, the director or designee will notify both parties of the date, time, and location of the prehearing. The purpose of the prehearing is to explain the hearing procedures to the parties, schedule a date for the full hearing, and to address any preliminary matters or motions. A full hearing must be scheduled within 30 calendar days of the date of the request for a hearing from a party, absent good cause for an extension.

(3) **Notice of hearing.** Following the prehearing conference, the director shall schedule the hearing and serve the respondent and complainant with notice of the date, time, location, participants, and purpose of the hearing. At the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by telephone or other electronic means. Each party in the hearing must have an opportunity to participate effectively in the hearing. This may include remote participation via audiovisual means. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to student accommodation and support services and approved as a reasonable accommo-

dation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven calendar days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(4) **General hearing procedures.**

(a) **Hearing authority.** The presiding officer exercises control over hearing proceedings. All procedural questions are subject to the final decision of the presiding officer. The presiding officer chairs the disciplinary council.

(b) **Closed hearings.** All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the presiding officer.

(c) **Appearance.**

(i) Failure to appear. In cases where proper notice has been given but the respondent fails to attend the hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(ii) Options for appearing. The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(d) **Advisors.** The complainant and the respondent may be assisted by one advisor during conduct review hearings. The advisor is there to provide guidance and advice to the party, but is not allowed to speak on behalf of the party, answer questions on the parties behalf, or question the other party or witnesses.

(e) **Disruption of proceedings.** Any person, including a party or advisor, who disrupts a hearing or does not follow the standards of decorum set by the presiding officer, may be excluded from the proceedings.

(f) **Remote appearance.** In the interest of fairness and expedience, the presiding officer may permit any person to appear by a method that allows the person to be seen and heard by the council.

(g) **Standard of evidence.** The council shall determine whether the respondent violated this code and the student conduct code, as charged in the notice of allegations sent by the investigator, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated this code or the student conduct code.

(h) **Evidence.** The council will be provided with a copy of the investigative report and all associated exhibits. The investigative report and exhibits will be admitted into evidence. If the parties wish the council to consider additional documentary evidence, such evidence should be provided to the director in advance of the hearing. Council may review proposed exhibits prior to the hearing.

(i) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The presiding officer may exclude irrelevant material. If not inconsistent with this section, the presiding officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, a pattern of conduct, credibility, or absence of mistake or lack of knowledge. Prior to allowing a question to be answered during a hearing, the presiding officer must determine whether the question is relevant and, if excluded, the presiding officer must explain the basis for their decision.

(ii) The respondent and complainant have the right to view all material presented during the course of the hearing. If a respondent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.

(iii) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(iv) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(v) Official notice may be taken of (A) any easily verifiable facts such as dates or weather conditions, (B) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (C) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(vi) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(i) **Discovery.** Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least seven calendar days prior to the hearing, absent extenuating circumstances. If the presiding officer determines the request is not relevant to the present allegation, the presiding officer may deny the request. The university will provide the requested information prior to the hearing to the extent feasible and permitted by state and federal law.

(j) **Subpoenas.** Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least 10 calendar days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding of-

ficer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing. A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving them a copy thereof, or by leaving such copy at the place of their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury. The presiding officer, upon motion by a party or at their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(k) **Motions.** Motions for summary judgment and motions to dismiss are not permitted under this process.

(l) **Witnesses.**

(i) The complainant, respondent, and the university's presenter may call witnesses at full hearings.

(ii) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the presiding officer to subpoena witnesses. The presiding officer has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(iii) The presiding officer may exclude witnesses from the hearing room when they are not testifying. The presiding officer is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. Any decision to exclude a witness shall be explained on the record.

(iv) All parties have the right to hear all testimony provided by witnesses during the hearing.

(v) The parties should inform the presiding officer of any possible need for an interpreter or any accommodation requests at least 10 calendar days prior to the hearing. The presiding officer will comply with WAC 10-08-150.

(m) **Questioning.** The university presenter, presiding officer, or the council may ask questions of any witnesses or the parties. The complainant and respondent will both be given the opportunity to submit questions in writing to the presiding officer for each party/witness. The presiding officer will ask the questions of the party/witness proposed by the complainant or respondent as long as the questions are relevant and not otherwise impermissible. The presiding officer will not ask proposed questions that are unclear or that harass the party or witness being questioned. If the presiding officer believes the question is unclear or harassing, the proposing party must be given an opportunity to clarify or revise the question. In no case will the complainant, respondent, or their advisors question witnesses or parties directly.

The presiding officer must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual

predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The presiding officer will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(n) **Remote appearance.** The presiding officer may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate.

(o) **Role of the presiding officer.** The presiding officer has authority to take actions related to the hearing process including, but not limited to:

- (i) Determine the order of presentation of evidence;
- (ii) Administer oaths and affirmations;
- (iii) Issue subpoenas pursuant to RCW 34.05.446;
- (iv) Rule on procedural matters, objections, and motions;
- (v) Rule on offers of proof and receive relevant evidence;
- (vi) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (vii) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (viii) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;
- (ix) Take official notice of facts pursuant to RCW 34.05.452(5);
- (x) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (xi) Permit or require oral argument or briefs and determine the time limits for submission thereof; and
- (xii) Take any other action necessary and authorized by any applicable statute or rule.

(p) **Role of the presenter.** A person will present a case explaining the basis for the investigator and director's initial decisions on behalf of the university. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR or designee, investigator, or an assistant attorney general appearing on behalf of the university.

(q) **Deliberations and sanctions.** Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated this code or the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated this code or the student conduct code, the presiding officer shall then decide what sanctions and remedies shall be imposed. The presiding officer may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the presiding officer's decision may be forwarded to the stu-

dent's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the presiding officer shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be served on the complainant and respondent within 14 calendar days from the date of the hearing. The written decision shall also:

- (i) Be correctly captioned identifying EWU and the name of the proceeding;
- (ii) Designate all parties and representatives participating in the proceeding;
- (iii) Identify the allegations at issue;
- (iv) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, methods used to gather other evidence, and hearings held;
- (v) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (vi) Contain appropriately numbered conclusions regarding the application of university policies and this code to the facts;
- (vii) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant or any other impacted student to restore or preserve equal access to the EWU's educational programs or activities;
- (viii) Contain a statement describing rights to appeal and the procedures for appealing.
- (r) **Finality.** The council's and presiding officer's decision becomes final at the conclusion of this process if an appeal is not timely filed.
- (s) **Notice of decision.** The presiding officer shall serve the complainant and respondent with a copy of the decision and notice of the right to appeal. The Title IX coordinator must also be provided with a copy of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

NEW SECTION

WAC 172-125-240 Appeals of student disciplinary council decisions. (1) **Timeline.** Either party may file an appeal from the student disciplinary council's decision. Appeals must be submitted in writing by 5:00 p.m. PST within seven calendar days from the date the student disciplinary council's decision is sent to the parties. Appeals must be submitted via email to srr@ewu.edu. The appeal must include the party's name and why they believe the student disciplinary council's was incorrect based on the bases for appeal outlined below.

- (2) **Basis for appeal.** Appeals may be filed for one or more of the following reasons:
 - (a) Procedural irregularity that would change the outcome of the student disciplinary council's decision;

(b) New evidence that would change the student disciplinary council's decision that was not reasonably available when the investigative report was finalized; or

(c) A member of the student disciplinary council or the presiding officer had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome of the investigation.

(3) **Response.** Once an appeal is filed, the office of student rights and responsibilities will serve the other party with a copy of the appeal. The other party will be given five calendar days to provide a written response to the appeal.

(4) **Stay of sanctions.** Sanctions go into effect immediately after the council's decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed along with the notice of appeal. The request for the stay will be reviewed by the director or designee. The stay may be granted in part or in its entirety, at the discretion of the director. The decision will be served on the respondent and the complainant. This decision is not subject to appeal.

(5) **Appeal authority.** Appeals will be determined by the vice president for student affairs or designee. The director will provide the appeal authority with the notice of appeal, any responses to the appeal, and the complete record of the student disciplinary council hearing. Before rendering a decision, the appeal authority may request additional information or explanation from the parties. However, except as required to explain the basis of new information, an appeal shall be limited to a review of the evidence presented to the student disciplinary council.

(6) **Decisions.** After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the student disciplinary council. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within 30 calendar days of the appeal authority receiving all necessary documentation. In cases where the appeal authority remands the decision or sanction, the case will be returned to the student disciplinary council or presiding officer for reconsideration or other action as specified by the appeal authority. With respect to sanctions, the appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(7) **Notification.** Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall draft a brief written statement setting forth the outcome of the appeal and the basis for their decision. The written statement is then forwarded to the director. The director shall serve the complainant and respondent with the written statement. The notice will also inform the parties that the appeal authority's decision is final and no further appeals may be made within the university. Judicial review of the university's decision may be available under chapter 34.05 RCW.

NEW SECTION

WAC 172-125-250 Sanctions and remedies. If any student or student organization is found to have committed a violation of WAC 172-125-010, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the director or student disciplinary council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of the university, the university may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) **Individual student sanctions.**

(a) Admonition: An oral statement to a student that they have violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for students and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any university policy or regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extracurricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property. Restitution also includes reimbursement for medical expenses incurred due to code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements may result in a hold on a student's ability to register and may prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: Monetary fines up to a maximum of \$500 against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct may be imposed. Failure to promptly pay such fines may prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.10.902, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time determined by the university.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsions may be noted on the student's transcript.

(l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) **Student organizations and/or group sanctions.** Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Per RCW 28B.10.902, any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of recognition by the university;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

- (i) Exclusion from intramural competition as a group;
 - (ii) Denial of use of university facilities for meetings, events, etc.;
 - (iii) Restitution; and/or
 - (iv) Fines.
- (3) **Remedies.** For violations of this code, the university may provide remedies to the complainant and other students impacted by the discriminatory conduct designed to restore or preserve equal access to the university's educational programs or activities.

PART III: DEFINITIONS AND ADMINISTRATION

NEW SECTION

WAC 172-125-300 Definitions. For purposes of this code, chapter 172-125 WAC, the definitions in this section apply.

"Appeal authority" refers to the university official presiding over an appeal.

"Appellant" refers to any respondent or complainant who appeals a decision.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a complaint under this code, the university may initiate the student conduct process on its own behalf.

"Complaint" means an oral or written request to the university to investigate a report of discrimination.

"Council" or "the council" refers to the student disciplinary council.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"File" or "filing" means to actually deliver documents. Documents required to be filed with a specific person at EWU under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the student rights and responsibilities office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Interpersonal violence" encompasses domestic violence, dating violence, and stalking.

"Level One Process" refers to the grievance procedures used to investigate and make determinations of responsibility for violations of this code that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, and do not involve felony-level crimes.

"Level Two Process" refers to the grievance procedures used to investigate and make determinations of responsibility for violations of this code that, if substantiated by a preponderance of evidence, may result in a sanction of suspension or expulsion, or involve felony-level crimes.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or the university.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, housing contract, university policies, and graduate/undergraduate catalogs and handbooks.

"Presiding officer" refers to the university official who is assigned to preside over a student disciplinary council hearing.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the Associated Students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies the university of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to send a document through electronic mail addressed to the party's university-issued email address or, if the party does not have a university-issued email address, to the email address on record with the university. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. Recognized or registered student organizations are responsible for updating their mailing address with their designated university office.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person who is enrolled or has been enrolled at the university for up to 12 months from the last date they were enrolled;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled regardless of when they were enrolled. A person who engaged in conduct in violation of this code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Title IX coordinator" refers to the Title IX coordinator or designee.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented, or operated by the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

NEW SECTION

WAC 172-125-301 Calculation of time periods. In calculating any of the time periods identified in this code, the day of any act or service of notice is not included in calculating the deadlines. For example, if an order is served on a student on a Monday and the student has 10 calendar days to appeal the order, the date of service (Monday) does not count towards the time period, the next day (Tuesday) does count toward the time period, and the appeal would be due by 5:00 p.m. on the following Thursday.

If the last day of a time period ends on a Saturday or Sunday, the deadline is extended to 5:00 p.m. on Monday. If the last day of a time period ends on a university holiday, the deadline is extended to 5:00 p.m. on the next weekday following the holiday.

NEW SECTION

WAC 172-125-302 Conflicts of interest and bias. (1) Individuals who play a role in investigating, presiding over, and making decisions pertaining to individual cases under this code including, but not limited to, the Title IX coordinator, dean of students, investigator, presiding officer, council, and appeal authority, shall not have any conflict of interest in the process or a bias for or against complainants or respondents generally or an individual complainant or respondent. A conflict of interest exists if the investigator, presiding officer or decision maker is the respondent, complainant, or a witness; if the respondent, complainant, or witness is a family member or friend; if the individual has a personal interest or bias; or if the individual has previously served in an advisory capacity for any of the parties or witnesses. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the Title IX coordinator within three calendar days of becoming aware of the potential conflict. The Title IX coordinator or designee shall determine whether a conflict of interest exists and take appropriate action. If the Title IX coordinator is the person alleged to have a conflict of interest or bias, the party may report such concerns to the dean of students, and the dean of students shall determine whether a conflict of interest exists and take appropriate action.

(2) Challenges to council membership. Members of the student disciplinary council and the presiding officer are subject to the conflict of interest limitations set forth in subsection (1) of this section.

(a) If a member has such a conflict, the person shall recuse themselves from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A council member's or the presiding officer's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the presiding officer. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies him/herself from a case, the presiding officer will appoint a replacement.

NEW SECTION

WAC 172-125-305 Administration and records. (1) Authority and interpretation. The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established this code for addressing concerns of discrimination by students. The responsibility for enforcement of this code rests with the university president and is further delegated to the vice president for student affairs and Title IX coordinator. Any questions regarding the interpretation or application of this code are referred to the Title IX coordinator for final determination. This code is not intended to protect any person or class of persons from injury or harm.

(2) **Records of resolution and grievance procedures.** Records relating to complaints, supportive measures, informal resolutions, investigations, conduct proceedings, sanctions, and remedies under this chapter shall be kept by the Title IX office for seven years from conclusion of a proceeding. Records pertaining to sanctions must also be maintained by the office of student rights and responsibilities for seven years from the conclusion of a proceeding.

(3) **Confidentiality of student disciplinary records.**

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. The university may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of 21 at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(d) Supportive measures. The university will keep any supportive measures provided to the complainant or respondent confidential to the extent that maintaining such confidentiality will not impair the ability of the university to provide the supportive measures.

(4) **Holds.**

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The director or presiding officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed under this code; or

(ii) If the student fails to respond to any properly delivered notice under this code.

(c) Required holds: The director shall place a hold on a student's academic record if the student is the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

WSR 24-17-113

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed August 19, 2024, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-054.

Title of Rule and Other Identifying Information: Student conduct code, chapter 172-121 WAC.

Hearing Location(s): On September 27, 2024, at 12:00 p.m., at 215A Tawanka Commons, Cheney, WA 99004.

Date of Intended Adoption: October 25, 2024.

Submit Written Comments to: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, email ascharosch@ewu.edu, website <https://inside.ewu.edu/policies>, beginning August 20, 2024, by September 30th at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email ascharosch@ewu.edu, by September 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with new Title IX regulations that are effective August 1, 2024, Eastern Washington University (EWU) has designed an updated process for receiving and responding to concerns about students engaging in discrimination, discriminatory harassment, sexual violence, or interpersonal violence (chapter 172-125 WAC). EWU's previous procedures were contained in chapter 172-121 WAC, Student conduct code. To make the regulation more accessible for students and to provide greater support to students throughout the process, the procedures for handling complaints involving discrimination, discriminatory harassment, sexual violence, and interpersonal violence have been moved from the student conduct code to this new code. Procedures and standards that were incorporated into the student conduct code that were specific to Title IX and discrimination are being removed. As identified in chapter 172-108 WAC, EWU declines to adopt the model rules of procedure issued by the office of administrative hearings. Instead, these rules are designed to emphasize the educational nature of the university community and to provide a prompt and equitable process for resolving concerns.

Reasons Supporting Proposal: These changes are being made to make the student conduct process more understandable for students, provide greater support to students who are experiencing discrimination, and comply with updated regulations issued by the United States Department of Education.

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

Rule is necessary because of federal law, Title VI of the Civil Rights Act of 1964, 42 U.S.C. section 2000d et seq.; Title IX of the Education Amendments of 1972, 20 U.S.C. section 1681 et seq.; Section 504 of the Rehabilitation Act of 1973; Americans with Disability Act of 1990, 42 U.S.C. section 12101 et seq.; chapter 28B.112 RCW, Campus sexual violence.

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, 509-359-6724; and Enforcement: Dr. Shari McMahan, 214 Showalter Hall, Cheney, WA 99004, 509-359-6200.

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. Not subject to 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(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 19, 2024

Annika Scharosch

Associate Vice President for Civil Rights
Compliance and Business Services

OTS-5549.1

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

WAC 172-121-010 Introduction. Eastern Washington University (EWU) is an academic community dedicated to (~~providing~~) instruction (~~in higher education~~), advancing knowledge through scholarship and research, and (~~providing related services to~~) servicing the (~~community~~) region.

As a public institution of higher education, (~~the university~~) EWU has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities and welfare of students, faculty, staff and guests. To achieve this, (~~the university~~) EWU establishes rules, regulations, procedures, policies, and standards of conduct.

Through the student conduct code as well as other (~~university~~) EWU policies and directives, (~~the university~~) EWU sets forth specific behavioral and academic expectations for students and student organizations. It is the responsibility of each student to clearly understand and comply with (~~these~~) outlined expectations.

The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established the following regulations for student conduct and discipline. The responsibility for enforcement of the student conduct code rests with (~~the university~~) EWU president and is further delegated to the vice president for student affairs or designee.

These provisions are not intended to protect any person or class of persons from injury or harm.

EWU's standards of conduct for students with respect to discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct, and retaliation are contained in chapter 172-125 WAC. If a report is received that a student has engaged in such conduct, EWU will follow the process set forth in chapter 172-125 WAC. If a report includes potential violations of this code and chapter 172-125 WAC arising out of the same facts and circumstances, the report will be investigated and adjudicated in accordance with chapter 172-125 WAC. In no case will this code be used to investigate and adjudicate violations of chapter 172-125 WAC.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

~~("Brief hearing" refers to a brief conduct review hearing before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level crimes.)~~

"Business days" refers to the days and hours ~~((the university))~~ EWU is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in ~~((the university))~~ EWU holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, ~~((the university))~~ EWU may initiate the student conduct process on its own behalf.

"Conduct review meeting" refers to a meeting before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion and that do not involve felony-level crimes.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a ~~((brief hearing))~~ conduct review meeting or the presiding officer for a full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"EWU" means Eastern Washington University.

"EWU official" includes any person employed or contracted by EWU, performing assigned administrative or professional responsibilities.

"EWU premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented, or operated by EWU.

"EWU president" refers to EWU president or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the student rights and responsibilities office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Full hearing" refers to a full conduct reviewing hearing before the council for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion ~~((, involve a Title IX complaint,))~~ or that could constitute felony-level crimes.

"Hearing authority" refers to the decision-maker in a conduct review hearing.

~~("Interpersonal violence" encompasses domestic violence, dating violence, and stalking.)~~

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's ((~~university~~)) EWU email account, by leaving a message on their personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or ((~~the university~~)) EWU.

"Policies" or "~~((university))~~ EWU policy" refers to the written regulations of ((~~the university~~)) EWU, including the standards of conduct for students, residence life handbook, housing contract, ((~~university~~)) EWU policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by ((~~the university~~)) EWU or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to ~~((post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail))~~ send a document through electronic mail addressed to the party's EWU-issued email address or, if the party does not have an EWU-issued email address, to the email address on record with EWU. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the EWU registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. Recognized or registered student organizations are responsible for updating their mailing address with their designated EWU office.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

~~("Sexual misconduct" encompasses sexual harassment or sexual assault, as defined in WAC 172-121-200.)~~

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person who is enrolled or has been enrolled at ((~~the university~~)) EWU for up to 12 months from the last date they were enrolled;

(c) Nonmatriculated, international students attending institutes or foreign study programs through ~~((the university))~~ EWU; and

(d) Any person who was previously enrolled at ~~((the university))~~ EWU for violations of the code committed while enrolled regardless of when they were enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

~~(("Title IX complaint" means a formal signed complaint from a current student, applicant, employee, or person participating in or seeking to participate in a university program or activity, or by the Title IX coordinator, alleging sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a university program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a Title IX complaint.))~~

"Title IX coordinator" refers to the Title IX coordinator or designee.

~~(("University" means Eastern Washington University.~~

~~"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.~~

~~"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.~~

~~"University president" refers to the university president or designee.)~~

"Vice president for student affairs" refers to the vice president for student affairs or designee.

NEW SECTION

WAC 172-121-021 Calculation of time periods. In calculating any of the time periods identified in this code, the day of any act or service of notice is not included in calculating the deadlines. For example, if a student is served with an order on a Monday and the student has 10 calendar days to appeal the order, the date of service (Monday) does not count towards the time period, the next day (Tuesday) does count toward the time period, and the appeal would be due by 5:00 p.m. on the following Thursday.

If the last day of a time period ends on a Saturday or Sunday, the deadline is extended to 5:00 p.m. on Monday. If the last day of a time period ends on an EWU holiday, the deadline is extended to 5:00 p.m. on the next weekday following the holiday.

AMENDATORY SECTION (Amending WSR 21-12-037, filed 5/25/21, effective 6/25/21)

WAC 172-121-030 Rights of students. Any student or student organization charged with any violation of the student conduct code ~~((and the complainant in the case of an allegation of sexual misconduct or interpersonal violence, have))~~ has the following rights where applicable:

- (1) ~~((The))~~ Right to a fair and impartial conduct review process;
- (2) ~~((The right to prior))~~ Right to receive written notice prior to ~~((attend))~~ a prehearing conference or hearing;
- (3) ~~((The))~~ Right to remain silent during any conduct review hearing;
- (4) ~~((The))~~ Right to know who filed the complaint against them as described in WAC 172-121-110;
- (5) ~~((The))~~ Right to speak on their own behalf in all proceedings;
- (6) ~~((The))~~ Right to hear all information and view all material presented against ~~((him or her))~~ them;
- (7) The right to call witnesses for a full hearing as described in WAC 172-121-122;
- (8) The right to ask or submit questions to be asked of witnesses for a full hearing, in a method determined by the conduct review officer, as described in WAC 172-121-122;
- (9) The right to consult an advisor as described in WAC 172-121-105(3);
- (10) The right to be presumed not responsible;
- (11) ~~((Complainants have the right to opt out of participating in the student conduct process;~~
- ~~(12))~~ The right to appeal as provided in WAC 172-121-130; and
- ~~((13))~~ (12) The right to be subjected to ~~((university))~~ EWU disciplinary action only one time for the same conduct.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-070 Conduct review officials. (1) **The director of SRR** or designee shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
 - (b) Manage the proceedings as described in this chapter;
 - (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;
 - (d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and
 - (e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects ~~((the university))~~ EWU or ~~((university))~~ the EWU community and whether the conduct process should be initiated.
- (2) **Conduct review officer (CRO):** The ~~((university))~~ EWU president delegates to the vice president of student affairs the authority to designate one or more CRO(s). The director of SRR, dean of students, or any other qualified individual may be designated as a CRO. The CRO(s) shall preside over ~~((brief hearings))~~ conduct review meetings and full conduct hearings under this chapter. For ~~((brief hear-~~

ings)) conduct review meetings, the CRO shall serve as the decision maker. For full hearings, the CRO shall serve as the presiding officer.

As the presiding officer((~~r~~)) in full hearings, the CRO has authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 34.05.446;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;
- (j) Take official notice of facts pursuant to RCW 34.05.452(5);
- (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Issue an order of default;
- (n) Hold prehearing conferences; and
- (o) Take any other action necessary and authorized by any applicable statute or rule.

(3) **Student disciplinary council:** The council serves as the decision maker for full hearings with respect to a finding of responsibility. The CRO in full hearings serves as the decision maker with respect to determining appropriate sanction(s) and remedies, upon a finding of responsibility.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the vice president for student affairs. (~~Appointment of council pool members is as follows:~~)

(i) (~~Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;~~) Councilmembers must meet the requirements of the role to serve on the hearing board. Councilmember appointments may be revoked;

(ii) Council chair (conduct review officer): Designated CRO who chairs council proceedings;

(iii) Vacancies: Council pool shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a full hearing, the director or designee, shall identify available members from the council pool to serve as the session council. Each session council must include three members. The council may consist of students, staff, or faculty members. Full hearings are determined by a majority vote of the council.

(4) **Investigator:** (~~For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the director may assign a complaint to~~) An EWU investigator may be assigned to conduct an investigation. If an EWU investigator is assigned outside of student rights and responsibilities,

the investigator will provide a written investigative report to the director of student rights and responsibilities.

(5) **Presenter in cases of a full hearing:** In full hearings, a person will present a case against the respondent on behalf of ((the university)) EWU. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR, designee, or an assistant attorney general appearing on behalf of ((the university)) EWU.

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed at least every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) ~~((A summary of the proceedings during))~~ An audio recording of a prehearing conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings;

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council or conduct review officer (CRO);

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476;

(x) ~~((For Title IX complaints, and remedies provided to the complainant designed to restore or preserve equal access to the university's programs or activities; and~~

~~(xi))~~ Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student ~~((discipline))~~ disciplinary council or CRO communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of ~~((the university))~~ EWU and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the respondent may review the records relative to their case. The respondent shall request to review the case records by contacting the CRO. The CRO shall make every reasonable effort to support the respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with ~~((the university's))~~ EWU's records retention schedule.

(b) Release of student disciplinary records. ~~((The university))~~ EWU shall not communicate a student's disciplinary record to any person or agency outside ~~((the university))~~ EWU without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) ~~((The university))~~ EWU shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and ~~((university))~~ EWU personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review ~~((his/her))~~ their own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) ~~((The university))~~ EWU may disclose to a student's parents a violation of any federal, state, or local law, or of any ~~((university))~~ EWU policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

~~((d) Supportive measures. The university will keep any supportive measures provided to the complainant or respondent in sexual misconduct or interpersonal violence cases confidential to the extent that maintaining such confidentiality will not impair the ability of the university to provide the supportive measures.))~~

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic or

EWU activities. (~~Hold~~ may also restrict access to transcripts, grades, or other academic records.)

(b) Discretionary holds: The CRO may place a hold on a (~~student's academic records~~) student in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the CRO.

(c) Required holds: The CRO shall place a hold on a student's (~~academic~~) EWU record if the student is the respondent to a violation of the conduct code and has withdrawn from (~~the university~~) EWU, or if the student withdraws from (~~the university~~) EWU after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person or (~~the university~~) EWU may file a complaint against a student or student organization for violation of the student conduct code. Complaints must be submitted in good faith.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities (www.inside.ewu.edu/srr); or

(ii) Title IX coordinator (www.inside.ewu.edu/titleix).

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where (~~the university~~) EWU is pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. (~~For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.~~)

(2) **Complaint review.** Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it (~~includes allegations of sexual misconduct or interpersonal violence,~~) may lead to suspension or expulsion and/or involves felony level criminal conduct to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122. If the director of SRR receives a complaint that involves potential violations of chapter 172-125 WAC, the director will refer the complaint to the Title IX coordinator within 24 hours to handle under the procedures contained in chapter 172-125

WAC. For all other complaints, the director may determine whether or not to dismiss the complaint, refer the matter to adaptable dispute resolution under WAC 172-121-102, or refer the matter for a ((brief)) conduct review meeting or full hearing.

~~((3) Sexual misconduct and interpersonal violence proceedings.~~

~~Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or whether there is a formal Title IX complaint.~~

~~(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within 24 hours.~~

~~(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process has been received.~~

~~The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If allegations include sexual misconduct or interpersonal violence but do not meet the definition of a Title IX complaint, the Title IX coordinator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint. If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be communicated in writing simultaneously to the parties.~~

~~SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.~~

~~(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within 90 days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the 90 days must be based on good cause.~~

~~(d) Investigations.~~

~~(i) Sexual misconduct and interpersonal violence. The university will investigate complaints of sexual misconduct and interpersonal violence, including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with~~

an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least 10 days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(ii) Other types of conduct. The director may request an investigation for other types of alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. An investigation may be completed by a single investigator or team of investigators. The investigator will contact the complainant, if applicable, respondent, and other witnesses to ask questions and gather relevant evidence. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence gathered during the investigation. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR.

(e)) (a) Investigations. The director may initiate an investigation for other forms of alleged misconduct. During the investigation, the investigator is responsible for collecting evidence related to the complaint. The investigation can be conducted by either a single investigator or a team of investigators. The investigator(s) will reach out to the complainant (if applicable), respondent, and other witnesses to ask questions and gather relevant evidence.

Throughout the investigation, all parties will have an equal opportunity to present witnesses and other evidence that supports their positions. At the conclusion of the investigation, the investigator will compile a final written report that fairly summarizes the relevant evidence gathered. This investigative report, along with any collected evidence, will be forwarded to the director of SRR if the investigation was conducted externally.

As part of the investigatory process, EWU may collaborate with outside organizations or entities, such as Sorority and Fraternity National Headquarters, when necessary to conduct the investigation into the alleged misconduct of student organizations.

(b) Confidentiality. To facilitate the investigatory process and protect the privacy of those involved, all information will be main-

tained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, ~~((the university))~~ EWU will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, ~~((the university))~~ EWU shall inform them that its ability to investigate and respond to the allegation will be limited. ~~((The university))~~ EWU cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

~~((f))~~ (c) Right to file a criminal report. Once the university is notified of an allegation ~~((of sexual))~~ misconduct ~~((or interpersonal violence))~~ that could constitute a crime, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, ~~((the university))~~ EWU will assist them in doing so. ~~((The university))~~ EWU will also notify the complainant that they are not required to file a report with local law enforcement. ~~((The university))~~ EWU will report allegations of ~~((sexual))~~ misconduct ~~((or interpersonal violence))~~ to law enforcement or other authorities when it is required to do so under federal, state, and local law.

~~((4))~~ (3) **Supportive measures and interim restrictions.** During the complaint review, the director or designee of SRR ~~((or Title IX coordinator))~~ will review whether any supportive measures or interim restrictions are needed. Supportive measures and interim restrictions are addressed in WAC 172-121-140.

~~((5))~~ (4) **SRR will follow up with the parties as described below.** ~~((a))~~ The director of SRR will contact the respondent ~~((, and the complainant in cases of sexual misconduct or interpersonal violence))~~ and complainant, where applicable, and provide them with the following information:

~~((i))~~ (a) The respondent's and complainant's rights under the student conduct code;

~~((ii))~~ (b) A summary of the allegations the complainant has against the respondent;

~~((iii))~~ (c) The potential conduct code violations related to the allegations; and

~~((iv))~~ (d) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

~~((b) In all cases alleging sexual misconduct or interpersonal violence))~~ Where applicable and based on the alleged misconduct, the director of SRR or designee will, in addition to the information specified under ~~((a)–(f))~~ this subsection, provide ~~((both))~~ parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

- (ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;
- (iii) Who will receive a report of the allegation;
- (iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;
- (v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;
- (vi) The procedures the university will follow when determining if discipline is appropriate;
- (vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and
- (viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

~~((+6))~~ **(5) Following the complaint review, the director of SRR will either dismiss the matter, refer it to adaptable dispute resolution, or arrange a prehearing conference.**

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, they may dismiss the matter. In such cases, the director of SRR or designee will prepare a written record of the dismissal. The director of SRR or designee will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. ~~((In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.))~~

(b) Adaptable dispute resolution. The director may refer the complaint to the adaptable dispute resolution process contained in WAC 172-121-102.

(c) Prehearing conference. If the director of SRR does not dismiss the matter they will arrange a prehearing conference as described in WAC 172-121-110 unless a respondent is opting to admit responsibility under WAC 172-121-118.

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

WAC 172-121-105 Conduct review proceedings. (1) General provisions:

(a) Conduct review proceedings in which the allegations do not involve ~~((a Title IX complaint,))~~ felony level crimes, or the potential sanction is less than suspension or expulsion, are brief ~~((hearings))~~ adjudicative proceedings in accordance with WAC 172-108-050(3) and the Administrative Procedure Act. Conduct review proceedings in which the allegations involve ~~((a Title IX complaint,))~~ felony level

crimes, or the potential sanction is suspension or expulsion, are considered full hearings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings. ~~((All Title IX complaints shall follow the regulations prescribed under 34 C.F.R. Part 106.))~~

(2) Notification for student organizations: When a charge is directed towards a student organization, the CRO will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant and the respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant or the respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) The advisor must provide the CRO with a FERPA release signed by the student they are assisting;

(d) If a complainant or the respondent is represented by an attorney, the attorney shall provide the CRO and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding;

~~(e) ((If a complainant or respondent wishes to have an advisor for a Title IX complaint and is not able to identify one, the student may contact SRR for assistance in finding an advisor;~~

~~(f))~~ In addition to an advisor, a complainant or respondent may bring a certified therapy animal with a handler for the hearing. The handler is not allowed to participate in the hearing process.

(4) Review of evidence:

(a) In ~~((brief hearings))~~ conduct review meetings, the respondent ~~((, and, in cases of sexual misconduct or interpersonal violence, the complainant))~~ may request to view material related to their case prior to a scheduled hearing by contacting the CRO. To facilitate this process, the party should contact the CRO as early as possible prior to the scheduled hearing. The CRO shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In full hearings, the respondent ~~((, and, in cases of sexual misconduct or interpersonal violence, the complainant))~~ may request to view material related to the case prior to the scheduled hearing by contacting the director of SRR. To facilitate this process, the party should contact the director as early as possible prior to the scheduled hearing. The director of SRR shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the CRO. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the CRO shall allow any other party to object to the request. The CRO will make a decision on the request and will communicate ~~((his/her))~~ their decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 23-11-109, filed 5/19/23, effective 6/19/23)

WAC 172-121-110 Notice of allegations and initial scheduling.

(1) Notice of investigation. If the director of SRR refers a complaint to an investigation, the director shall provide the respondent with a notice of investigation that meets the following requirements:

- (a) Is made in writing;
- (b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;
- (c) Indicates that the complaint has been assigned to a (~~university~~) EWU investigator and provide the contact information for the investigator;
- (d) Provides notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;
- (e) Provides a reminder that the person may have an advisor of their choice throughout the student conduct process;
- (f) A statement that students are prohibited from knowingly furnishing false information during the student conduct process; and
- (g) Where applicable, information about supportive measures and resources available to the respondent as well as information about (~~the university's~~) EWU's prohibition on retaliation.

(2) Notice of allegations: If the director of SRR decides to send the case to hearing, following a review of the investigative report if any, the director of SRR shall appoint a CRO to the case and notify the respondent of the CRO and the date of a prehearing conference. (~~(In cases alleging sexual misconduct or interpersonal violence, the CRO and session council assigned must have completed training on issues relating to sexual misconduct and interpersonal violence, the Violence Against Women Reauthorization Act, and Title IX requirements.)~~) Notification of the allegations to the respondent must:

- (a) Be made in writing;
- (b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information, including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;
- (c) Provide notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;
- (d) Provide a reminder that the person may have an advisor of their choice and, for Title IX complaints, that (~~the university~~) EWU will provide them with an advisor upon requests for the purposes of conducting cross-examination;
- (e) Provide information about how to review the evidence gathered prior to the hearing;
- (f) Provide a statement that students are prohibited from knowingly furnishing false information during the student conduct process;
- (g) Inform them of the option to admit responsibility under WAC 172-121-118; and
- (h) Include a date, time, and location of the prehearing conference.

(3) Follow up with complainant. (~~In all cases alleging sexual misconduct or interpersonal violence, the SRR office shall notify the complainant(s) of the date, time, and location of the prehearing conference and of their right to attend the conference. The director may, at their discretion, conduct a separate prehearing conference with each party.~~) The SRR office shall also follow up with the complainant(s) and respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant or respondent engages in retaliatory behavior, (~~the university~~) EWU shall take immediate steps to protect the complainant or respondent from further harassment or retaliation. (~~The complainant will also be notified that they have a right to an advisor during the hearing process, and, for Title IX complaints, that the university will provide an advisor upon request for the purposes of conducting cross-examination.~~)

(4) If additional information is learned during the investigation that may rise to additional allegations, (~~the university~~) EWU must provide the respondent with an updated notice of allegations.

(5) The procedures for the prehearing conference for (~~brief hearings is~~) conduct review meetings are contained in WAC 172-121-121. The procedures for the prehearing conference for full hearings is contained in WAC 172-121-122.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-118 Admission of responsibility. (~~The university~~) EWU encourages respondents to acknowledge harm and accept responsibility for repairing harm, to the extent possible, experienced as a result of a student's conduct. An investigator, CRO, or presiding officer may offer to the respondent at any time the opportunity to admit responsibility for the alleged misconduct. If the respondent decides to admit responsibility, the respondent will sign a document drafted by SRR taking responsibility. The CRO and/or presiding officer, depending on the type of conduct, will schedule a recorded meeting for the respondent to take responsibility on the record and for the CRO and/or presiding officer to determine the appropriate sanctions under WAC 172-121-400. (~~If the alleged misconduct includes sexual misconduct or interpersonal violence, both parties must consent to this alternative process in writing and the complainant will be notified of the meeting and will have an opportunity to provide a statement about the conduct and its impacts prior to any sanctioning determination.~~)

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-121 ((Brief hearing)) Conduct review meeting procedures. (1) Applicability: The conduct review officer (CRO) may hold a (~~brief hearing~~) conduct review meeting with the respondent if the proposed sanction is less than a suspension and the allegations do not involve (~~a Title IX complaint, or~~) felony level criminal behavior.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: ~~The respondent (, and complainant in cases of sexual misconduct or interpersonal violence,)~~ will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. People may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a person does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: ~~The ((complainant and the))~~ respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. In ~~((brief hearings))~~ conduct review meetings, the advisor is limited to advising the student and cannot speak on behalf of the student.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Electronic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio ~~((tape))~~ recording, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by an electronic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office will schedule a prehearing conference with the respondent. Only the respondent and the respondent's advisor may appear at the prehearing conference ~~((, unless the case involves alleged sexual misconduct or interpersonal violence. In cases alleging sexual misconduct or interpersonal violence, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate prehearing conferences))~~. The purpose of the prehearing conference is to advise the parties regarding the student conduct process. During the prehearing conference, the CRO will:

(a) Review the written list of allegations with the respondent;

(b) Inform the respondent who is bringing the complaint against them;

- (c) Provide the respondent with a copy of the student conduct code and any other relevant (~~(university)~~) EWU policies;
- (d) Explain the respondent's rights under the student code;
- (e) Explain the conduct review procedures;
- (f) Where applicable, explain the respondent's and complainant's rights and responsibilities in the conduct review process;
- (g) Review the option for admitting responsibility under WAC 172-121-118; and
- (h) Explain possible penalties under the student conduct code.

At the end of the prehearing conference, the CRO will either conduct or schedule a (~~(brief hearing)~~) conduct review meeting with the respondent as set forth in this subsection or arrange for a meeting to take an admission of responsibility under WAC 172-121-118. If proper notice was given of the prehearing conference and the respondent fails to attend the conference, the CRO may either proceed with the (~~(brief hearing)~~) conduct review meeting and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

(6) Scheduling. A (~~(brief hearing)~~) conduct review meeting may take place immediately following the prehearing conference or it may be scheduled for a later date or time (~~(, except that, in cases of sexual misconduct or interpersonal violence, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing)~~). If the (~~(brief hearing)~~) conduct review meeting will be held at a later date or time, the CRO shall schedule the hearing and (~~(notify)~~) serve the respondent (~~(and, in the case of sexual misconduct or interpersonal violence, the complainant)~~) with a notice of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so. The CRO has sole discretion as to whether to call witnesses.

(7) If the respondent fails to appear at the (~~(brief hearing)~~) conduct review meeting, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

(8) Deliberation. After the hearing, the CRO shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence and issue a decision within seven business days.

(a) If the CRO determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO shall dismiss the complaint.

(b) If the CRO determines that the respondent violated the student conduct code, the CRO shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

(9) Sanctions. In determining what sanctions shall be imposed, the CRO may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the CRO authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed. In addition to sanctions under this code, if the student is also an employee of (~~(the university)~~) EWU, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with (~~(university)~~) EWU policy.

(10) Notification. The CRO shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. ~~((a))~~ The findings shall be based exclusively on the evidence provided at the hearing. The decision must also include:

~~((i))~~ (a) Identification of the section of the code alleged to have been violated;

~~((ii))~~ (b) A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews, methods to gather evidence, and hearings;

~~((iii))~~ (c) Findings of fact supporting the determination;

~~((iv))~~ (d) Conclusions regarding the application of the code to the facts along with the rationale for each determination;

~~((v))~~ (e) Sanctions ~~((and remedies))~~;

~~((vi))~~ (f) Respondent's right to appeal.

~~((b) In cases of sexual misconduct or interpersonal violence)~~

Where applicable and to the extent permitted by law, the complainant shall be provided with written notice of ~~((~~

~~(i) The university's determination as to whether such sexual misconduct or interpersonal violence occurred;~~

~~((ii))~~ substantiated violations:

(i) The complainant's right to appeal, if any;

~~((iii))~~ (ii) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

~~((e))~~ (g) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or other crime as defined in 42 U.S.C. Sec. 13925(a).

(11) Finality. The CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be timely.

AMENDATORY SECTION (Amending WSR 23-11-109, filed 5/19/23, effective 6/19/23)

WAC 172-121-122 Full hearing procedures. (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime ~~((, involve a Title IX complaint,))~~ or could result in a sanction of suspension or expulsion. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference unless the respondent has admitted responsibility under WAC 172-121-118.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. ~~((For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.))~~

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office or designee will arrange for a prehearing conference with the parties to advise them about the student conduct process. During the prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and, where applicable, complainant with a copy of the student conduct code and any other relevant ~~((uni-
versity))~~ EWU policies;

- (d) Explain the respondent's and, where applicable, complainant's rights and responsibilities under the student code;
- (e) Explain the conduct review procedures;
- (f) Explain possible penalties under the student conduct code;
- (g) Review the option for admitting responsibility under WAC 172-121-118;
- (h) Schedule a date for the full hearing; and
- (i) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the SRR director or designee shall schedule the hearing and (~~notify~~) serve the respondent and, where applicable, complainant with notice of the date, time, location, participants, and purpose of the hearing. At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by telephone or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Council may review proposed exhibits prior to the hearing. Any investigation conducted by (~~the university~~) EWU will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, a pattern of conduct, credibility, or absence of mistake or lack of knowledge. (~~For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.~~)

(b) The respondent (~~and complainant have~~) has the right to view all material presented during the course of the hearing. (~~If a respondent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.~~)

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452 (~~except for the additional restrictions on the admission of evidence required by Title IX~~).

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from (~~the university~~) EWU. Either party may request (~~the university~~) EWU to produce relevant documents in (~~the university's~~) EWU's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. (~~The university~~) EWU will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least 10 days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving them a copy thereof, or by leaving such copy at the place of their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(c) The CRO, upon motion by a party or at their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is en-

titled to judgment as a matter of law. (~~(A motion for summary judgment is not permitted for Title IX complaints.)~~)

(11) Witnesses.

(a) The complainant, respondent, and (~~(the university's)~~) EWU's presenter may call witnesses at full hearings.

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. (~~(For Title IX complaints, any decision to exclude a witness shall be explained on the record.)~~)

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) (~~(The complainant's advisor)~~) Through the CRO, the respondent's advisor, and (~~(the university's)~~) EWU's presenter may ask questions of any witness, or party, including cross-examination questions. (~~(For cases that do not involve Title IX complaints, if the student does)~~) If the parties do not have an advisor, (~~(the complainant and respondent)~~) they may submit questions in writing to the CRO and the CRO may ask the questions. (~~(For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing.)~~) The CRO may also ask questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant (~~(, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made)~~).

(b) The council may ask their own questions of any witness or party called before them.

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of ~~((the university))~~ EWU, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with ~~((university))~~ EWU policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within 10 business days from the date of the hearing. The written decision shall also:

- (a) Be correctly captioned identifying EWU and the name of the proceeding;
- (b) Designate all parties and representatives participating in the proceeding;
- (c) Identify the allegations at issue;
- (d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (f) Contain appropriately numbered conclusions regarding the application of ~~((university))~~ EWU policies and this code to the facts;
- (g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility ~~((,))~~ and any disciplinary sanctions imposed ~~((, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities))~~;
- (h) Contain a statement describing rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

(17) Notification to the complainant. ~~((In cases of sexual misconduct or interpersonal violence))~~ Where applicable and to the extent permitted by law, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether ~~((sexual))~~ misconduct ~~((or interpersonal violence))~~ occurred;

(b) The complainant's right to appeal, if any;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as ~~((an order requiring the student harasser to not contact))~~ a no contact order with the complainant; or

(ii) ~~((The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a)).~~

~~((e))~~ Any remedies provided to the complainant. ~~((For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.~~

~~(18) **Notification to Title IX coordinator.** For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.)~~

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-130 Appeals. (1) Basis: Appeals following a ~~((brief hearing))~~ conduct review meeting or full hearing may be filed by the respondent under this section. ~~((In cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or a full hearing.))~~ Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures that affected the outcome of the matter.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information that was not reasonably available at the time the determination finding responsibility or dismissal was made that could affect the outcome of the matter. It is the party's obligation to present all evidence at the time of the original hearing. ~~((The university))~~ EWU is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(f) The ~~((Title IX coordinator,))~~ investigator ~~((,))~~ or hearing authorities had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(2) Filing: Appeals may be filed following a ~~((brief hearing))~~ conduct review meeting, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted by 5:00 p.m. PST to the director of student rights and responsibilities or designee within 10 ~~((business))~~ calendar days from service of the council's decision following a full hearing or dismissal of a complaint, or within 21 calendar days from service of a decision from a ~~((brief hearing))~~ conduct review meeting conducted by the CRO;

(b) The appeal shall be in writing and shall include:

(i) The ~~((appellant's))~~ student's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the ~~((appellant))~~ student is seeking.

~~((c) In cases of sexual misconduct or interpersonal violence, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.))~~

(3) Stay of sanctions: Sanctions go into effect immediately after the hearing decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed with SRR within five calendar days of the decision. The request for the stay will be reviewed by the CRO or presiding officer who presided over the hearing. The stay may be granted in part or in its entirety, at the discretion of the CRO/presiding officer. The decision will be communicated to the respondent ~~((and, for sexual misconduct and interpersonal cases, the complainant))~~. This decision is not subject to appeal.

(4) Appeal authorities:

(a) For dismissal of a complaint, appeals are determined by the dean of students or designee.

(b) For ~~((brief hearings))~~ conduct review meetings, appeals are determined by the dean of students or designee.

(c) For full hearings, appeals are determined by the vice president for student affairs or designee.

(5) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(6) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it in relation to the basis for appeal, the appellant's notice of appeal, where applicable, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(7) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the hearing authority. The appeal decision shall include an explanation of the ap-

peal authority's decision and rationale. The appeal decision must be issued within 30 calendar days of the appeal authority receiving all necessary documentation.

(8) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(9) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(10) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR or designee shall serve the respondent, and, ~~((in cases of sexual misconduct or interpersonal violence, notify))~~ where applicable, the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

(11) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of ~~((the university's))~~ EWU's decision may be available under chapter 34.05 RCW.

(12) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

WAC 172-121-140 Supportive measures and interim restrictions.

(1) Supportive measures. During the complaint review, the director of SRR or designee, ~~((Title IX coordinator, or designee))~~ will evaluate the circumstances and determine if any supportive measures to assist or protect the parties during the conduct code process are needed. ~~((For sexual misconduct and interpersonal violence cases,))~~ Supportive measures ((are)) may be available before or after the filing of a complaint or where no formal complaint is filed. Supportive measures are provided to students free of charge and may include, but are not limited to, safety planning with the university, mutual restrictions on contact between the parties, academic or workplace modifications, providing counseling for the complainant and/or respondent, or campus

housing modifications. The purpose of a supportive measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. ~~((For Title IX complaints,))~~ Supportive measures are designed to restore or preserve equal access to the university's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and the university's educational environment, or deterring ~~((sexual))~~ harassment. ~~((Supportive measures in cases of sexual misconduct and interpersonal violence are coordinated by the Title IX coordinator or designee.))~~

(2) Interim restrictions. ~~((For Title IX complaints, in situations where there is cause to believe that a student or a student organization poses an immediate threat to the physical health or safety of any student or other individual, including themselves, the Title IX coordinator in conjunction with the director of SRR may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing.~~

~~Simultaneous with such action(s), the director of SRR will refer the allegations to the conduct review officer, who will process such allegations in accordance with the provisions of this student conduct code.~~

~~For all non-Title IX cases,))~~ The SRR director or designee may take immediate action(s) against ~~((the))~~ a student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing. Simultaneously, the director shall refer the allegations to the conduct review officer. ~~((For non-Title IX cases,))~~ Interim restrictions ~~((is))~~ are subject to the following:

(a) Interim restriction actions may only be imposed in the following situations:

(i) When a student or student organization poses an immediate threat to:

(A) The physical health or safety of any student or any other individual;

(B) The student's own physical safety and well-being; or

(C) Any property of the ~~((university))~~ EWU community; or

(ii) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the ~~((university))~~ EWU community.

(b) During the interim restriction period, a student may be restricted by any or all of the following means:

(i) Denial of access including, but not limited to: Assignment to alternate ~~((university))~~ EWU housing or removal from ~~((university))~~ EWU housing, limitation of access to ~~((university))~~ EWU facilities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from ~~((the university))~~ EWU or restriction of access to campus ~~((For Title IX complaints, a student may only be placed on interim suspension if, after conducting an individualized safety and risk analysis, the director determines the person poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct or interpersonal violence));~~

(iii) Mandatory medical/psychological assessment of the student's capability to remain ~~((in the university))~~ enrolled at EWU.

(3) The director of SRR or designee will determine what restriction(s) will be placed on a student.

(4) The director of SRR or designee will prepare a brief memorandum for record containing the reasons for the interim restriction. The director will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) could constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) An explanation of the process for emergency appeal reviews.

~~(5) ((Notice to complainant. In cases alleging sexual misconduct or interpersonal violence, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five business days of the notice as to why the interim restriction should or should not be modified.~~

~~(6))~~ Emergency appeal review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs or designee within five business days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within 10 business days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to the criteria identified in WAC 172-121-140(1) upon which the interim restriction was imposed (threat to health or safety of the ((~~university~~)) EWU community, potential for creating campus disorder, impeding the lawful activity of others, etc.). Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator or provided to the CRO under the regular hearing process.

(b) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the director and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency appeal review, the vice president will only review materials available to and information considered by the director and/or dean of students at the time the interim restriction was imposed, written statements by the ((~~two parties~~)) appellant, and information that becomes available as a part of ((~~the university's~~)) EWU's investigation that the vice president deems relevant.

~~(c) ((In cases alleging sexual misconduct or interpersonal violence, if a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal~~

~~the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five business days of receiving notice of the complainant's appeal.~~

~~(d))~~ During the emergency appeal review, the vice president for student affairs or designee will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction action. The written decision shall include a rationale for the basis of the decision and be issued within 15 business days of the date of service of an interim restriction.

~~((e))~~ (d) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

~~((f))~~ (e) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-300 Violations. ~~((The university))~~ EWU prohibits students from engaging in the conduct described in this section, WAC 172-121-301 through 172-121-324, chapters 172-125 and 172-90 WAC, and relevant ~~((university))~~ EWU policies. Clubs, organizations, societies, or similarly organized groups in or recognized by ~~((the university))~~ EWU and/or the associated students of Eastern Washington University are also subject to all of these standards. Violations of these rules and policy may subject a student or student group to disciplinary action by ~~((the university))~~ EWU. Groups may also be subject to disciplinary action for knowingly failing to exercise preventive measures relative to violations of this code by their members.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

WAC 172-121-302 Abuse, threats, bullying, and harassment. (1) Abuse. Assault and other forms of physical abuse. Assault is intentionally touching or striking another person in a harmful or offensive way.

(2) Threats. A threat is any conduct and/or speech that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person. If the threat primarily involves speech, the speaker also must have consciously disregarded a substantial, unjustifiable risk that the communications could be viewed as threatening violence.

(3) Bullying. Bullying is behavior that is:

(a) Intentional;

(b) Targeted at an individual or group; and

(c) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate

in, or benefit from ((the university's)) EWU's programs and activities.

~~((4) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one of the conditions outlined in subsection (3) (a) or (b) of this section are present:~~

~~(a) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or~~

~~(b) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.))~~

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-306 Unauthorized use of electronic or other devices.

Making an audio or video recording of any person while on ((university)) EWU premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. The act of storing, sharing, publishing, or in any way disseminating such recordings or images through any medium is strictly prohibited. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-400 Sanctions ((and remedies)).

If any student or student organization is found to have committed any of the offenses described in WAC 172-121-300 through 172-121-324, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of ((the university, the university)) EWU, EWU may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) **Individual student sanctions:**

(a) Admonition: An oral statement to a student that they have violated ((~~university~~)) EWU rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's ((~~university~~)) EWU-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to ((~~the university~~)) EWU or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The ((~~university~~)) EWU conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of \$400 against individual students for violation of ((~~university~~)) EWU rules or regulations or for failure to comply with ((~~university~~)) EWU standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to ((~~the university~~)) EWU community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.10.902, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time determined by ((~~the university~~)) EWU.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restric-

tions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) **Expulsion:** Permanent separation of the student from ((~~the university~~)) EWU with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from ((~~university~~)) EWU premises. Expulsions may be noted on the student's transcript.

(l) **Loss of institutional, financial aid funds:** Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) **Revocation of degree:** A degree awarded by ((~~the university~~)) EWU may be revoked for fraud, misrepresentation, or other violation of law or ((~~university~~)) EWU standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the ((~~university~~)) EWU president.

(n) Education: Requirement to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(o) EWU housing restrictions: Separation of the respondent from a residence hall or halls for a definite period of time, after which the respondent may be eligible to return, or permanent restriction. Conditions for readmission may be specified.

(2) **Student organizations and/or group sanctions:** Any of the above sanctions may be imposed in addition to those listed below:

(a) **Probation:** Formal action placing conditions on the group's continued recognition by or permission to function at ((~~the university~~)) EWU. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) **Social probation:** Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) **Restriction:** The temporary withdrawal of ((~~university~~)) EWU or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) **Revocation:** The permanent withdrawal of ((~~university~~)) EWU or ASEWU recognition for a group, club, society or other organization. Per RCW 28B.10.902, any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of recognition by ((~~the university~~)) EWU;

(e) **Additional sanctions:** In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of ((~~university~~)) EWU facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

~~((3) **Remedies.** For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 172-121-303 Domestic violence, dating violence, and stalking.
- WAC 172-121-304 Sexual misconduct.

WSR 24-17-114

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed August 19, 2024, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-090.

Title of Rule and Other Identifying Information: WAC 458-20-23801
Watercraft excise tax—Watercraft depreciation schedule.

Hearing Location(s): On September 25, 2024, at 10:00 a.m. This meeting will be conducted over the internet/telephone. In-person option also available. Contact Barbara Imperio at BarbaraI@dor.wa.gov for dial-in/login information. To attend in person, contact BarbaraI@dor.wa.gov by September 18, 2024.

Date of Intended Adoption: September 26, 2024.

Submit Written Comments to: Brenton Madison, P.O. Box 47453, Olympia, WA 98504-7453, email Brentonm@dor.wa.gov, fax 360-534-1606, beginning August 20, 2024, 12:00 a.m., by September 26, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 82.49.040 requires the department of revenue (department) to prepare a depreciation schedule (at minimum annually) for use in the determination of fair market value for watercrafts, which is the basis for measuring the watercraft excise tax. The purpose of this rule-making effort is to evaluate the watercraft depreciation table values in WAC 458-20-23801. The department is proposing amendments to the watercraft depreciation schedule for the following reason: Watercraft valuation, sales, and registration data indicated an adjustment to several values in the table was necessary (as required by RCW 82.49.040). This proposal was based upon the department's own analysis of watercraft valuation, sales, and registration data. The department will solicit additional comments and feedback from external stakeholders regarding the proposed watercraft depreciation schedule.

Reasons Supporting Proposal: RCW 82.49.040 requires the department to engage in rule-making activities in the adoption of the watercraft excise tax depreciation schedule. The rule is intended to clarify the department's policies on a number of watercraft excise tax issues and provide taxpayers with an annually updated schedule that reflects the recent vessel valuation, sales, and registration data.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 82.49.040.

Statute Being Implemented: RCW 82.49.040.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

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 Brenton

Madison, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606.

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 rule does not impose more-than-minor costs on businesses, as the depreciation rate schedule proposed in the rule is not materially different from the depreciation rate schedule used by the same taxpayers last year. The only changes are depreciation rates, not the method for determining the measure of the watercraft excise tax.

August 19, 2024
Brenton Madison
Rules Coordinator

OTS-5542.1

AMENDATORY SECTION (Amending WSR 23-20-070, filed 9/29/23, effective 1/1/24)

WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule. (1) **Introduction.** This rule addresses the watercraft excise tax, including an overview of the tax, exemptions from the tax, and the watercraft depreciation schedule used to determine a watercraft's fair market value. The rule also addresses administrative issues including payment, interest, and penalties.

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions and terms.** The following definitions and terms apply throughout this rule.

(a) **"Dealer"** means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state. RCW 88.02.310.

(b) **"Fair market value."**

(i) In cases where the most recent purchase price of a vessel is known to the vessel owner, "fair market value" means the purchase price of the vessel in the year it was purchased. For subsequent years, "fair market value" means the purchase price of the vessel depreciated according to the schedule in subsection (6) of this rule. RCW 82.49.040.

(ii) In cases where a vessel has been acquired by lease or gift, or the most recent purchase price of the vessel is not known to the vessel owner, "fair market value" means the appraised value of the vessel determined according to subsection (7) of this rule. RCW 82.49.050(1).

(iii) In cases where the department determines that the purchase price stated by the owner is not a reasonable representation of the true "fair market value" of the vessel, the department must appraise the vessel according to subsection (7) of this rule. RCW 82.49.050(2).

(c) **"Owner"** means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal

action whether or not the vessel is subject to a security interest, and means registered owner where the reference to owner may be construed as either to registered or legal owner. RCW 88.02.310.

(d) **"Vessel"** means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. RCW 88.02.310.

(e) **"Waters of this state"** means any waters within the territorial limits of this state as described in 43 U.S.C. Sec. 1312. RCW 88.02.310.

(4) **Overview of the watercraft excise tax.**

(a) The watercraft excise tax generally applies to vessels measuring 16 feet or more in overall length. The tax is imposed for the privilege of using a vessel upon the waters of this state, except those vessels which are exempt from the tax under subsection (5) of this rule and under RCW 82.49.020. The tax is imposed on an annual basis and is equal to the greater of five dollars or one-half of one percent of a vessel's fair market value.

(b) Persons required to register a vessel with this state under chapter 88.02 RCW who fail to register their vessel and avoid paying the watercraft excise tax are guilty of a gross misdemeanor and are liable for any unpaid excise tax. The department must also impose the penalties authorized under subsection (9) of this rule and under RCW 82.49.080 and chapter 82.32 RCW.

(c) When a person first registers a vessel in this state, the watercraft excise tax is imposed beginning with the month in which the vessel is registered through the following June 30th. In cases where the initial registration period is less than 12 months, the watercraft excise tax is prorated according to the number of months covered by the registration period. The initial registration is valid from the month of registration through the following June 30th.

(i) The department of licensing may extend or diminish the initial registration period for purposes of staggered renewal periods under RCW 88.02.560.

(ii) A vessel is considered first registered in this state if in the immediately preceding 12 month period the vessel was not registered in this state or was registered in another jurisdiction during the same period.

(iii) **Example 1. Watercraft excise tax computation - Initial vessel registration.**

Facts: Dan Carter purchases a 20 foot powerboat from a Washington dealer in April 2022. The purchase price is \$20,000. Dan is a resident of Washington. Dan registers the vessel with the department of licensing shortly after his purchase, in April 2022.

Result: The department of licensing will issue a registration decal for the vessel covering the registration period of July 2021 through June 2022 and collect the annual watercraft excise tax liability for this registration period in the amount of \$25 (\$20,000 (purchase price) x .005 (watercraft excise tax rate) x .25 (3 month prorated period April - June 2022)).

(5) **Exemptions.** The following types of vessels are exempt from watercraft excise tax:

(a) Those exempt from vessel registration under RCW 88.02.570;

(b) Those used exclusively for commercial fishing purposes;

(c) Those measuring less than 16 feet in overall length, including personal watercraft;

(d) Those owned and operated by the United States, another state, or any municipality or subdivision thereof;

(e) Those owned by a nonprofit organization or association engaged in character building of children under 18 years of age and solely used for such purposes;

(f) Those held for sale by a dealer, but not rented on a regular commercial basis; and

(g) Those owned by Indian tribes and tribal members, used in the exercise of treaty fishing rights, and exempt under WAC 308-93-720.

(6) Depreciation schedule.

(a) RCW 82.49.040 requires the department to prepare a depreciation schedule annually, for use in determining the fair market value of vessels, which is the measure of the watercraft excise tax. The following schedule includes separate depreciation rates for two categories of vessels, including a column for the vessel's year of ownership and columns for the depreciated percentage of the vessel's value by vessel length. First, vessel owners must determine the appropriate column to use, depending on the length of the vessel they own. Second, vessel owners must identify the depreciated percentage of value for their vessel according to the row which corresponds to the number of years they have owned the vessel.

((Year of Ownership	Vessels less than 30 feet	Vessels 30 feet or more
1	1.00	1.00
2	0.86	0.84
3	0.79	0.77
4	0.73	0.70
5	0.68	0.66
6	0.64	0.62
7	0.60	0.59
8	0.57	0.56
9	0.55	0.53
10	0.52	0.52
11	0.50	0.50
12	0.47	0.47
13	0.45	0.45
14	0.44	0.44
15	0.42	0.43
16	0.40	0.42
17	0.39	0.42
18	0.37	0.41
19	0.36	0.40
20	0.35	0.39
21	0.34	0.39
22	0.33	0.38
23	0.32	0.37
24	0.32	0.36
25 or more	0.32	0.36))
<u>Year of Ownership</u>	<u>Vessels less than 30 feet</u>	<u>Vessels 30 feet or more</u>
1	1.00	1.00

<u>Year of Ownership</u>	<u>Vessels less than 30 feet</u>	<u>Vessels 30 feet or more</u>
<u>2</u>	<u>0.87</u>	<u>0.84</u>
<u>3</u>	<u>0.78</u>	<u>0.76</u>
<u>4</u>	<u>0.73</u>	<u>0.71</u>
<u>5</u>	<u>0.69</u>	<u>0.67</u>
<u>6</u>	<u>0.65</u>	<u>0.64</u>
<u>7</u>	<u>0.62</u>	<u>0.61</u>
<u>8</u>	<u>0.59</u>	<u>0.58</u>
<u>9</u>	<u>0.57</u>	<u>0.56</u>
<u>10</u>	<u>0.55</u>	<u>0.53</u>
<u>11</u>	<u>0.53</u>	<u>0.51</u>
<u>12</u>	<u>0.49</u>	<u>0.48</u>
<u>13</u>	<u>0.46</u>	<u>0.45</u>
<u>14</u>	<u>0.45</u>	<u>0.44</u>
<u>15</u>	<u>0.44</u>	<u>0.43</u>
<u>16</u>	<u>0.42</u>	<u>0.42</u>
<u>17</u>	<u>0.40</u>	<u>0.41</u>
<u>18</u>	<u>0.39</u>	<u>0.40</u>
<u>19</u>	<u>0.37</u>	<u>0.39</u>
<u>20</u>	<u>0.36</u>	<u>0.38</u>
<u>21</u>	<u>0.35</u>	<u>0.37</u>
<u>22</u>	<u>0.34</u>	<u>0.37</u>
<u>23</u>	<u>0.34</u>	<u>0.36</u>
<u>24</u>	<u>0.33</u>	<u>0.36</u>
<u>25 or more</u>	<u>0.33</u>	<u>0.35</u>

(b) **Example 2. Standard vessel registration renewal.**

Facts: Deborah Peters purchased a 28-foot sailboat in September 2017. The purchase price of the sailboat was \$40,000. Deborah is a Washington resident and the sailboat is used exclusively upon Washington waters. In June 2022, Deborah renews the vessel's registration for the upcoming annual period of July 2022 through June 2023.

Result: Deborah will use the column titled "Vessels less than 30 feet" to determine the fair market value of her sailboat. Since Deborah bought the sailboat within the annual period of July 2017 through June 2018, that period is considered Year 1 for purposes of ownership. Accordingly, the period of July 2022 through June 2023 is considered Year 6 for purposes of ownership. The depreciated value of the sailboat in Year 6 is equal to 61 percent of Deborah's initial purchase price of \$40,000, or \$24,400. Deborah is subject to watercraft excise tax in the amount of \$122 ($\$24,400$ (fair market value) \times .005 (watercraft excise tax rate)).

(7) **Vessel appraisal.**

(a) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department must appraise the vessel before it can be registered for use upon the waters of this state.

(b) If the department determines the purchase price of a vessel reported by the vessel's owner at the time of its registration is not representative of its fair market value, the department must appraise the vessel to determine its fair market value. If the appraised value

is less than the reported purchase price, the department will issue a refund of the overpaid tax. If the appraised value is greater than the reported purchase price, the department will notify the vessel owner of the additional tax liability, which must be paid within 30 days of the department's notice.

(c) If a vessel is homemade, the vessel's owner must make a notarized declaration of its value. See RCW 82.49.050(3) for more information.

(d) For purposes of this subsection, "appraisal" includes the use of industry pricing guides, other evaluation tools, and independent appraisals in order to ascertain the fair market value of a vessel.

(8) Disputes related to a vessel's appraised value or taxability.

(a) Any vessel owner who disputes a vessel's appraised value under RCW 82.49.050, or taxable status, may request a review of a tax assessment by filing a petition with the department as provided in WAC 458-20-100 (Informal administrative reviews).

(b) If the vessel owner's petition is denied, the vessel owner may appeal to the board of tax appeals as provided in RCW 82.03.190. In deciding the case, the board of tax appeals may require an independent appraisal of the vessel, the cost of which must be shared between the vessel owner and the department.

(9) Administration.

(a) **Payment of tax.** The watercraft excise tax is due and payable to the department of licensing, county auditor, or other appointed agent at the time the vessel is registered. A registration will not be issued or renewed until the watercraft excise tax is paid in full. For previously registered vessels, watercraft excise tax is due at the time of the vessel's registration renewal and must be paid prior to the start of the vessel registration period, which covers the period of July 1st through June 30th of the following year.

(b) **Refunds.** Taxpayers who overpay the watercraft excise tax in full or in part at the time of a vessel's registration are eligible for a refund of the overpaid tax. Taxpayers are also entitled to receive interest according to RCW 82.32.060. See RCW 82.49.065 for more information regarding refunds.

(c) **Penalties and interest.** An owner of a vessel that is not registered as required under chapter 88.02 RCW and that avoided payment of the watercraft excise tax is liable for the following penalties and interest:

- (i) One hundred dollars for the owner's first violation;
- (ii) Two hundred dollars for the owner's second violation;
- (iii) Four hundred dollars for the owner's third violation and any successive violations;
- (iv) The penalties prescribed under chapter 82.32 RCW; and
- (v) The interest prescribed under chapter 82.32 RCW.

WSR 24-17-118

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 19, 2024, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-135.

Title of Rule and Other Identifying Information: WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs, and 182-505-0225 Children's Washington apple health with premiums—Calculation and determination of premium amount.

Hearing Location(s): On September 24, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_M78jsSfQ7q0abAHTCc3iQ. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than September 25, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning August 22, 2024, 8:00 a.m., by September 24, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email Johanna.Larson@hca.wa.gov, by September 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-504-0015 and 182-505-0225 so that HCA does not terminate children's health insurance program (CHIP) coverage for nonpayment of premiums during a child's continuous eligibility period and does not condition or delay enrollment on payment of unpaid premiums.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Emily Good, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0920.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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: 42 C.F.R. 457.570. Failure to amend state rules to comply with this federal regulation could result in the loss of federal funds.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 19, 2024
Wendy Barcus
Rules Coordinator

OTS-5570.1

AMENDATORY SECTION (Amending WSR 23-23-057, filed 11/8/23, effective 12/9/23)

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs. (1) A certification period is the period of time we determine that you are eligible for a categorically needy (CN) Washington apple health program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the end of the last month of the certification period.

(2) Newborn coverage begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) If you are eligible for apple health based on pregnancy, the certification period continues through the last day of the month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.

(4) If you are newly eligible for apple health coverage and had a pregnancy end within the last 12 months, your certification period for after-pregnancy coverage:

(a) Begins the first day of the month you are eligible; and

(b) Ends the last day of the 12th month following the end of your pregnancy.

(5) If you are eligible for the refugee program, the certification period ends at the end of the 12th month following your date of entry to the United States.

(6) If you are a child under age six receiving apple health for kids without a premium, your certification period ends the last day of the month of your sixth birthday.

(7) If you are eligible for newborn coverage, your coverage continues through the last day of the month of your first birthday. Apple health for kids coverage begins automatically on the first day of the month after your newborn coverage ends and the certification period ends the last day of the month of your sixth birthday.

(8) For all other CN coverage, the certification period is 12 months.

(9) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless ~~((a required premium (described in WAC 182-505-0225) is not paid for three consecutive months, or))~~ you:

(a) Turn age 19;

(b) Move out-of-state; or

(c) Die.

(10) When you turn 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the 12-month period is not over, unless:

(a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn 19;

(b) The inpatient stay continues into the following month or months; and

(c) You remain eligible except for turning age 19.

(11) A retroactive certification period is described in WAC 182-504-0005.

(12) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

OTS-5571.1

AMENDATORY SECTION (Amending WSR 17-12-018, filed 5/30/17, effective 6/30/17)

WAC 182-505-0225 Children's Washington apple health with premiums—Calculation and determination of premium amount. (1) For the purposes of this chapter, "**premium**" means an amount paid for health care coverage under WAC 182-505-0215.

(2) Premium requirement. (~~Eligibility for~~) The Washington apple health premium-based program under WAC 182-505-0215 requires payment of a monthly premium.

(a) The first monthly premium is due in the month following the determination of eligibility.

(b) There is no premium requirement for health care coverage received in the month eligibility is determined or in any prior month.

(c) A child who is American Indian or Alaska native is exempt from the monthly premium requirement.

(3) Monthly premium amount.

(a) The premium amount for the medical assistance unit (MAU) is based on countable income under chapter 182-509 WAC and the number of people in the MAU under chapter 182-506 WAC.

(b) The premium amount is as follows:

(i) If the MAU's countable income exceeds (~~two hundred ten~~) 210 percent of the federal poverty level (FPL) but does not exceed (~~two hundred sixty~~) 260 percent of the FPL, the monthly premium for each child is \$20.

(ii) If the MAU's countable income exceeds (~~two hundred sixty~~) 260 percent of the FPL but does not exceed (~~three hundred twelve~~) 312 percent of the FPL, the monthly premium for each child is \$30.

(iii) The medicaid agency charges a monthly premium for no more than two children per household.

(iv) Payment of the full premium is required. Partial payments cannot be designated for a specific child or month.

(v) Any third party may pay the premium on behalf of the household. Failure of a third party to pay the premium does not eliminate the obligation of the household to pay past due premiums.

(c) A change that affects the premium amount takes effect the month after the change is reported.

(4) Nonpayment of premiums.

~~((a) Premium-based coverage ends for all children in the household if the required premiums are not paid for three consecutive months.~~

~~(b) Premium-based coverage is restored back to the month coverage ended if the unpaid premiums are fully paid before the certification period ends.~~

~~(c) The household may reapply for premium-based coverage ninety days after the coverage ended for nonpayment.~~

~~(d))~~ The agency writes off past-due premiums after ~~((twelve))~~ 12 months.

WSR 24-17-123
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed August 19, 2024, 3:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-032.

Title of Rule and Other Identifying Information: Implementing chapter 319, Laws of 2024, flexible and part-time work for general and limited authority Washington peace officers.

Hearing Location(s): On September 24, 2024, at 4:00 p.m., online via Microsoft Teams, link is available on <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 236 925 888 860, Passcode CAVyKW; or phone 833-322-1218, Code 184 726 30#.

Date of Intended Adoption: September 27, 2024.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, beginning September 3, 2024, 8:00 a.m., by September 23, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, email drs.rules@drs.wa.gov, by September 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Making necessary changes to implement chapter 319, Laws of 2024, which allows law enforcement agencies to have general and limited authority Washington peace officers to work part-time while remaining eligible for law enforcement officers' and firefighters' benefits.

Statutory Authority for Adoption: RCW 41.50.50 and chapter 319, Laws of 2024.

Statute Being Implemented: Chapter 319, Laws of 2024.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Enforcement: Mike Ricchio, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7227.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule, and DRS is not voluntarily making it applicable.

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).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers, so they do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 19, 2024
Bianca Stoner
Rules Coordinator

OTS-5567.3

AMENDATORY SECTION (Amending WSR 17-10-035, filed 4/26/17, effective 5/27/17)

WAC 415-104-011 Definitions. All definitions in RCW 41.26.030 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.26 RCW are defined in this chapter.

(1) **Commissioned** means that an employee is employed as an officer of a general authority Washington law enforcement agency and is empowered by that employer to enforce the criminal laws of the state of Washington.

(2) **Director of public safety** means a person who is employed on or after January 1, 1993, by a city or town on a full-time, fully compensated basis to administer the programs and personnel of a public safety department.

This definition applies only to cities or towns in which the population did not exceed (~~ten thousand~~) 10,000 at the time the person became employed as a director of public safety.

(3) **Elective employer** means the employer of the LEOFF Plan 1 elected official during the member's leave of absence from the LEOFF employer for the purpose of serving in elective office.

(4) **Full-time employee** means an employee who is normally expected to earn basic salary from an employer for a minimum of (~~one hundred sixty~~) 160 hours in a calendar month.

(5) **Fully compensated employee for firefighters** means an employee who is normally expected to earn a basic monthly salary no less than (~~one hundred sixty~~) 160 times the state minimum hourly wage. Nominal sums including, but not limited to, stipends or ancillary benefits such as insurance or leave accrual, provided to volunteer firefighters are not compensation for the purpose of determining whether a firefighter is fully compensated.

(6) **Fully compensated employee for law enforcement officers** means the employee earns basic salary from an employer at a rate of pay comparable to the rate of pay received by full-time employees.

(7) **Left the employ of an employer** as used in RCW 41.26.470, 41.26.510, and 41.26.520 means any break in employment, whether formally separated or not formally separated, due to service in the uniformed services, national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States Department of Health and Human Services.

(~~(7)~~) (8) **LEOFF** means the law enforcement officers' and firefighters' retirement system established by chapter 41.26 RCW.

(~~(8)~~) (9) **LEOFF employer** means the employer, as defined in RCW 41.26.030, who employs the member as a law enforcement officer or firefighter.

(~~(9)~~) (10) **LEOFF Plan 1 elected official** means a LEOFF Plan 1 member who is a civil service employee on leave of absence because he or she has been elected or appointed to an elective public office and who chooses to preserve retirement rights as an active LEOFF member under the procedure described in this chapter.

(~~(10)~~) (11) **Performing service** as used in RCW 41.26.470, 41.26.510, and 41.26.520 means engaging in activities in response to a disaster, major emergency, special event, federal exercise, or official training after having left the employ of an employer as described in subsection (~~(6)~~) (7) of this section.

(~~(11)~~) (12) **Plan 1 and Plan 2.**

(a) "Plan 1" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(b) "Plan 2" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

~~((12))~~ (13) **Public safety officer** means a person who is employed on or after January 1, 1993, on a full-time, fully compensated basis by a city or town to perform both law enforcement and firefighter duties.

This definition applies only to cities or towns in which the population did not exceed ~~((ten thousand))~~ 10,000 at the time the person became employed as a public safety officer.

~~((13))~~ (14) **Uniformed firefighter position** means a position which may only be filled by uniformed personnel as that term is defined in RCW 41.56.030 (7)(e) as in effect on July 1, 1995. A position only qualifies as a uniformed firefighter position if the employer has identified it as such for all purposes. An employer may designate a position as uniformed regardless of whether the employer is covered by public employees' collective bargaining under chapter 41.56 RCW.

AMENDATORY SECTION (Amending WSR 20-06-039, filed 2/27/20, effective 3/29/20)

WAC 415-104-225 Am I a LEOFF member? If you are employed by an employer as a ~~((full-time, fully compensated))~~ law enforcement officer or firefighter, you are required to be a LEOFF member.

(1) Law enforcement officers.

(a) You are a law enforcement officer ~~((only))~~ if you are commissioned and employed on a ~~((full-time,))~~ fully compensated basis as a:

- (i) City police officer;
- (ii) Town marshal or deputy marshal;
- (iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Beginning July 1, 2024, the term "law enforcement officer" also includes any person who is commissioned and employed by an employer on a fully compensated basis to enforce the criminal laws of the state of Washington generally, on a less than full-time basis.

(c) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

~~((e))~~ (d) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety

of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed (~~ten thousand~~) 10,000. See RCW 41.26.030(3).

~~((d))~~ (e) If you meet the requirements of (a), (b), (c) or ~~((e))~~ (d) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

~~((e))~~ (f) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) **Firefighters.**

(a) You are a firefighter if you are employed in a uniformed firefighter position by a fire department of an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires. The primary duty of a position is defined by what is expected of the full-time position, not by the number of hours or percentage of hours that the duty is performed.

Example A: A full-time position in a fire department of an employer is responsible for preventing, controlling, and extinguishing fires. The employer rarely has fires. The position spends the majority of its time performing other fire protection activities. The position is a firefighter.

Example B: A fire department of an employer has a full-time fire marshal position or firefighter trainer position. The position requires the legal authority and responsibility to perform fire protection activities. The position is a firefighter.

Example C: An employer's community development department has a fire marshal position. The community development department is not a fire department and its purpose is not fire protection activities. The position is not a firefighter.

(i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

(ii) You are a firefighter if you qualify as supervisory firefighter personnel.

(A) To qualify as "supervisory firefighter personnel" you must:

(I) Supervise firefighters or other supervisory firefighter personnel;

(II) Be in a position located within a firefighting department or organization whose primary or sole purpose is fire protection activities; and

(III) Direct fire protection activities.

(B) This includes first line supervisors of firefighters, who typically direct from the scene of a fire, up to and including positions that are administrative in nature when the primary duty is to provide executive leadership for fire protection activities, such as setting strategic priorities for the organization.

Example A: A City Administrator supervises various city departments including a fire department. The City Administrator supervises the Fire Chief, who is a firefighter, as well as other department heads. The City Administrator would not be considered supervisory firefighter personnel because, while the duties of the position include oversight of the fire department, it is not the primary duty of the position. Furthermore, the position is not located within a fire-fighting department or organization whose primary or sole purpose is fire protection activities.

Example B: A Fire Chief of a large fire department does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the Fire Department. The Fire Chief supervises three battalion chiefs, a Human Resources Director, and a Chief Financial Officer. The Fire Chief is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose sole purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

Example C: An Administrator of an organization whose primary purpose is fire protection activities does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the organization. The Administrator supervises two Battalion Chiefs, a Human Resources Director, and a Chief Financial Officer. The Administrator is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose primary purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

(iii) If your employer requires firefighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a firefighter unless you qualify as supervisory firefighter personnel.

(iv) You are a firefighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(v) You do not qualify for membership as a firefighter if you are a volunteer firefighter or resident volunteer firefighter.

(b) You are a firefighter if you are employed on a full-time, fully compensated basis by an employer as an emergency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Commissioned" - WAC 415-104-011.

(b) "Director of public safety" - WAC 415-104-011.

(c) "Employer" - RCW 41.26.030.

(d) "Firefighter" - RCW 41.26.030.

(e) "Full time" - WAC 415-104-011.

(f) "Fully compensated" - WAC 415-104-011.

(g) "Law enforcement officer" - RCW 41.26.030.

(h) "Member" - RCW 41.26.030.

(i) "Public safety officer" - WAC 415-104-011.

- (j) "Uniformed firefighter position" - WAC 415-104-011.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-104-235 Can I terminate my status as a LEOFF member?

- (1) Your membership in the retirement system is terminated if you:
- (a) Die;
 - (b) Separate from service; or
 - (c) Cease to be employed (~~full-time~~) as a law enforcement officer or full-time firefighter.
- (2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.
- (a) "Firefighter" - RCW 41.26.030 and WAC 415-104-225(2).
 - (b) "Full-time employee" - WAC 415-104-011.
 - (c) "Law enforcement officer" - RCW 41.26.030 and WAC 415-104-225(1).
 - (d) "Member" - RCW 41.26.030.
 - (e) "Service" - RCW 41.26.030.

AMENDATORY SECTION (Amending WSR 04-20-005, filed 9/23/04, effective 10/24/04)

WAC 415-104-374 LEOFF Plan 2 part-time leave of absence. (1)

What are the LEOFF Plan 2 part-time leave rules for full-time law enforcement officers?

- (a) You must be a current LEOFF Plan 2 **law enforcement** member;
 - (b) Your employer must authorize you to work part time and go on an unpaid part-time leave of absence;
 - (c) While in part-time work/part-time leave status, you cannot do any other work for pay for your employer; and
 - (d) When you return to full-time employment, the employment must be with the same employer who granted you the part-time leave.
- (2) **May I purchase service credit for periods of part-time leave?** See WAC 415-02-175 for information about purchasing service credit for an unpaid authorized leave of absence.

WSR 24-17-127
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 20, 2024, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-123.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On September 24, 2024, at 10:00 a.m. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/4283482697?omn=88907697700>, Meeting ID 428 348 2697; or join by phone (audio only) 253-215-8782 US (Tacoma), Meeting ID 898 4617 4265, Passcode 425312916. Find your local number <https://lni-wa-gov.zoom.us/j/k4P4Mu5Ep>. The virtual and telephonic hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 19, 2024.

Submit Written Comments to: Jo Anne Attwood, Department of Labor and Industries (L&I), Insurance Services, Employer Services, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@lni.wa.gov, fax 360-902-4988, beginning August 21, 2024, at 8:00 a.m., by September 24, 2024, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4998, TTY 360-902-5797, email JoAnne.Attwood@lni.wa.gov, by September 23, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Classification development's goal is to implement clear rule writing to ensure staff and customers can easily understand and apply the workers' compensation insurance classification and reporting rules. Classification development studied some subclassifications for potential reduction in number; and reviewed classification and reporting rules for improvement and clarification.

The purpose of this rule making is not to make substantive changes to how employers are classified and amendments will not increase employer rates.

As part of this rule making, L&I reviewed chapters 296-17 and 296-17A WAC for need, clarity, and consistency to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

The CR-101 included chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance, as part of this rule making. After review, it was determined no changes are needed to this chapter.

Proposed amendments include:

WAC 296-17A-	WAC Description	What's Changed	Reason for Change
3407	Gas, oil, and asphalt dealers	Reduce the number of subclassifications and reformat rules.	L&I is combining subclassifications as part of our plan to reduce the overall number of subclassifications in the Classification plan to ease administrative burden for customers and staff. Some reasons for collapsing: <ul style="list-style-type: none"> • Low number of employers/hours reporting in subclassification (low credibility from actuarial view). • Subclassification does not represent separate risks from overall risk classification. • Low loss data. • No longer need to track these subclassifications separately. If the current format of these rules is a barrier to clarity, they are also being reformatted to make them easier to understand, apply, and follow.
4804	Farms: Poultry		
6506	Photography studios		
6705	Ski facilities		
0108	Ditches and canals, N.O.C.		
0521	Painting building interiors; wallpaper hanging/removal		
0603	Machinery: Installation, service and/or repair, N.O.C.; Millwright work, N.O.C.		
1106	Rental stores, N.O.C.; Truck canopy sales		
1109	Automobile and truck towing services, N.O.C.		
1304	Telecommunication service providers—Administrative, office, and sales personnel		
1407	Bus companies		
1802	Aluminum smelting		
2004	Iron or steel merchants; wire rope and cable dealers		
2007	Grain, bean and pea elevators and warehouses		
2008	Field bonded warehouses		
2101	Grain, feed and flour mills and dealers		
2104	Fruit and vegetable packing—Fresh		
2201	Laundry, dry cleaning and dyeing establishments		
2204	Laundry or dry cleaning—Coin-operated, self-service operations		
2401	Paper, pulp, or wood fiber: Manufacturing		
2904	Veneer: Commercial production		
2905	Wood furniture and casket: Manufacturing, assembling, or repairing; Furniture refinishing		
2906	Pattern or model—Metal, plastic or wood: Manufacturing		
2909	Woodenware—Household and sporting goods N.O.C.: Manufacturing or assembly		
3102	Stone wool insulation: Manufacturing		
3103	Cement or lime: Manufacturing		
3105	Concrete blocks, bricks, poles, piles, tiles and beams manufacturing		
3403	Aircraft: Manufacturing		
3408	Natural gas companies		
3409	Self-service gas stations		
3410	Convenience grocery stores or minimarkets with self-service gasoline operations		
3412	Automobile and truck: Body and fender repair shops		
3501	Brick or clay products, N.O.C: Manufacturing		
3512	Plastic goods: Manufacturing—Cutting, milling or bending		
3513	Rubber goods, N.O.C.: Manufacturing		
3603	Furniture stripping and refinishing; metal plating or polishing, rustproofing, N.O.C.		
3604	Galvanizing or tinning—Not electrolytic, N.O.C.		

WAC 296-17A-	WAC Description	What's Changed	Reason for Change
3605	Truck: Manufacturing or assembly		
3808	Upholstery work, N.O.C.		
3903	Sugar refining; molasses and syrup, N.O.C.: Manufacturing		
4103	Newspaper publishing		
4108	Letter service shops and mailing or addressing companies		
4401	Cold storage lockers		
4402	Ice: Manufacturing or harvesting		
4404	Cold storage warehouse		
4911	Construction estimators		
5002	Booming and rafting logs		
5109	Heavy machinery and equipment including locomotive engines: Manufacture or repair; Press roller recoating/resurfacing		
5204	Railroad car: Manufacturing or repair		
6201	Mortuaries, funeral homes, crematoriums		
6203	YMCA/YWCA institutions		
6402	Stores: Grocery, N.O.C.—Retail		
6608	Motion picture production		
6902	Logging road: Construction or maintenance		
6903	Aerial spraying, seeding, crop dusting, or firefighting		
6121	Acute care hospitals—Without a fully implemented safe patient handling program	Put the note back on the classification subsection title "to be assigned only by the hospital underwriter."	This note was removed in error in 2023.
6501	Barbers, salons, tattoo shops	Reformat and clarify that booth renter exclusion doesn't apply to tattoo and piercing shops. The booth renter exclusion is limited to booth renters performing cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW.	There's been historical staff and customer confusion over the booth renter exclusion and to whom it applies ever since the department of licensing removed booth renters from their statutes in the late 1990s.

Reasons Supporting Proposal: L&I is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035). The proposed rule making will amend some classifications to increase ease of reporting, and ensure consistent and equitable treatment to businesses.

This rule making will potentially benefit all state fund employers by making it easier to do business with L&I. This rule making will also allow L&I staff to provide more consistent service to our customers.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, 360-902-4777; Implementation: Michelle O'Brien, Tumwater, Washington, 360-902-4826; and Enforcement: Brenda Heilman, Tumwater, Washington, 360-902-6369.

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)(b)(vi), as the proposed rules adjust rates pursuant to legislative standards in RCW 51.16.035. This rule amends the risk classifications under chapter 296-17A WAC. Each risk classification has an assigned rate that is used to calculate an employer's workers' compensation premium.

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 set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The rule is fully exempt from a small business economic impact statement under RCW 34.05.310 (4)(f), as the proposed rules adjust rates as required by RCW 51.16.035. This rule amends the risk classifications under chapter 296-17A WAC. Each risk classification has an assigned rate that is used to calculate an employer's workers' compensation premium.

August 20, 2024

Joel Sacks

Director

OTS-5578.1

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-0108 Classification 0108.

0108-00 Ditches and canals, N.O.C.

~~((Applies to contractors engaged in the construction of ditches and canals not covered by another classification (N.O.C.). A ditch or canal consists of a long trench dug in the ground that will remain uncovered to serve as an artificial waterway or artificially improved river such as for irrigation, drainage, or a boundary line. Work contemplated by this classification includes digging of main irrigation canals or drainage ditches and all laterals extending from the canal or ditch, installation of pipe, making connections as needed, and filling or backfilling as needed. Equipment used by contractors subject to this classification includes a variety of machinery and equipment such as power shovels, backhoes, bulldozers, dump trucks, and mechanical or hand tool trench diggers.~~

~~This classification excludes asphalt surfacing/resurfacing which is to be reported separately in classification 0210 or 0212, and concrete construction which is to be reported separately in the applicable concrete construction classification(s).~~

0108-01 Sewer construction; septic tank installation

~~**Applies to:** Contractors engaged in the construction or repair of new or existing sewer lines and systems. This includes, but is not limited to, sewers, cesspools, drainpools, storm drains, and septic tanks including the drainfield construction.~~

~~**Construction services include,** but are not limited to:~~

- ~~Installation and maintenance of all types of storm, sanitary or sewage lines and systems;~~
- ~~Excavation and trench digging;~~
- ~~Leveling trenches with fill material such as sand or gravel, including filling or backfilling;~~
- ~~Installation of force main type sewage work;~~
- ~~Installation of storm sewer lines including the outfall construction of drain concrete boxes, catch basins, manholes, and handling and laying of pipe (regardless of the size of pipe or depth below the ground);~~
- ~~Making connections.~~

Typical machinery includes, but is not limited to:

- ~~Power shovels;~~
- ~~Backhoes;~~
- ~~Bulldozers;~~
- ~~Dump trucks;~~
- ~~Trenchless or directional boring equipment;~~
- ~~Manual digging.~~

Excluded activities in this classification:

- ~~Side sewer hookups (street to house) when performed by a plumbing contractor as part of a plumbing contract (report in 0306);~~
- ~~Sewer pipe cleaning including services engaged in line cleaning and unplugging of waste lines (report in 0306).~~

0108-02 Tanks, N.O.C. - Underground: Installation, repair, or removal

Applies to contractors engaged in the installation, repair or removal of underground tanks not covered by another classification (N.O.C.) such as those used to store gas or oil. Activities include excavating or digging of holes, placement or removal of tank, and filling or backfilling. This classification makes no distinction as to the size of tank being placed or removed. Usually, the actual lifting into or out of the ground occurs with the use of a power shovel, front end loader or backhoe. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as power shovels, front end loaders, backhoes, bulldozers, and dump trucks.))

Applies to:

Contractors engaged in the construction of ditches and canals not covered by another classification (N.O.C.).

A ditch or canal consists of a long trench dug in the ground that will remain uncovered to serve as an artificial waterway or artificially improved river such as for irrigation, drainage, or a boundary line.

Work activities include, but are not limited to:

- Digging of main irrigation canals or drainage ditches;
- Digging all laterals extending from the canal or ditch;
- Installation of pipe and making connections as needed;
- Filling or backfilling as needed.

Equipment used include, but are not limited to:

- Backhoes;
- Bulldozers;
- Dump trucks;
- Mechanical or hand tool trench diggers;

- Power shovels.

Exclusions:

- Asphalt surfacing/resurfacing is classified in 0210 or 0212;
and
- Concrete construction is classified in the applicable concrete construction classification(s).

0108-01 Sewer construction; septic tank installation**Applies to:**

Contractors engaged in the construction or repair of new or existing sewer lines and systems.

Types of systems installed include, but are not limited to:

- Cesspools;
- Drainpools;
- Septic tanks including the drainfield construction;
- Sewers;
- Storm drains.

Work activities include, but are not limited to:

- Installation and maintenance of all types of storm, sanitary or sewage lines and systems;
- Excavation and trench digging;
- Leveling trenches with fill material such as sand or gravel, including filling or backfilling;
- Installation of force main type sewage work;
- Installation of storm sewer lines including the outfall construction of drain concrete boxes, catch basins, manholes, and handling and laying of pipe (regardless of the size of pipe or depth below the ground);
- Making connections.

Equipment used include, but are not limited to:

- Backhoes;
- Bulldozers;
- Dump trucks;
- Manual digging equipment;
- Power shovels;
- Trenchless or directional boring equipment.

Exclusions:

- Side sewer hookups (street to house) when performed by a plumbing contractor as part of a plumbing contract is classified in 0306;
- Sewer pipe cleaning including services engaged in line cleaning and unplugging of waste lines is classified in 0306.

0108-02 Tanks, N.O.C. - Underground: Installation, repair, or removal**Applies to:**

Contractors engaged in the installation, repair or removal of underground tanks not covered by another classification (N.O.C.) such as those used to store gas or oil.

This classification makes no distinction as to the size of tank being placed or removed

Work activities include, but are not limited to:

- Excavating or digging of holes;
- Placement or removal of tank;
- Filling or backfilling.

Equipment used include, but are not limited to:

- Backhoes;
- Bulldozers;
- Dump trucks;
- Front end loaders;
- Power shovels.

AMENDATORY SECTION (Amending WSR 16-11-082, filed 5/17/16, effective 7/1/16)

WAC 296-17A-0521 Classification 0521.**0521-00 Painting building interiors; wallpaper hanging/removal**

~~((Applies to contractors engaged in painting building interiors regardless of the height inside the building. This classification includes building interiors such as, but not limited to:~~

~~• Single and multiple story residential houses and commercial buildings;~~

- ~~• Warehouses;~~
- ~~• Factories;~~
- ~~• Coliseums;~~
- ~~• Theaters;~~
- ~~• Stores; and~~
- ~~• Churches.~~

~~The following structures are examples which would **not meet** the definition of a building or qualify as interior painting:~~

- ~~• Bridges;~~
- ~~• Refineries;~~
- ~~• Grain silos;~~
- ~~• Water towers;~~
- ~~• Service station canopies; or~~
- ~~• Tanks.~~

~~Paint is applied by brush, roller or spray to a variety of surfaces such as wood, wallboard, plaster, stucco, metal, concrete, or other types of surfaces found within the interior of a building.~~

~~This classification includes:~~

~~• All preparation work such as the set up of scaffolding, sanding, removal of old paint or asbestos, taping or masking, and clean up work;~~

~~• The hanging or removal of wallpaper. The process of hanging wallpaper includes cleaning or scraping walls to ensure the wallpaper will adhere to the surface. Depending on the type of wallpaper, adhesive is applied to the wall surface, the wallpaper, or both. Patterns are matched and the strip is applied to the surface and brushed smooth to remove the air pockets. This process is repeated until the entire job is complete;~~

~~• Refinishing or resurfacing of tubs, sinks, appliances and countertops.~~

~~This classification excludes:~~

~~• Exterior painting of buildings or structures which is to be reported separately in classification 0504. Classifications 0521 and 0504 may be assigned to the same employer provided accurate records are maintained which distinguish interior building painting contracts from exterior building or structure painting contracts;~~

~~• Contractors engaged in waterproofing buildings or structures N.O.C., pressure washing services or sandblasting of buildings or structures, lead paint abatement, and the exterior painting of buildings or structures, including interior/exterior tanks which are all to be reported separately in classification 0504;~~

~~• Painting of murals or other artwork on the interior of buildings which is to be reported separately in classification 4109; and~~

~~• Painting of murals or other artwork on the exterior of buildings which is to be reported separately in classification 0403.~~

~~**Special note:** See asbestos certification and training requirements at www.lni.wa.gov.)~~

Applies to:

Businesses painting building interiors regardless of the height inside the building.

Building interiors include, but are not limited to:

- Churches;
- Coliseums;
- Factories;
- Single and multiple story residential houses and commercial buildings;
- Stores;
- Theaters;
- Warehouses.

Examples of structures that would not meet the definition of a building or qualify as interior painting:

- Bridges;
- Grain silos;
- Refineries;
- Service station canopies;
- Tanks;
- Water towers.

Work activities and processes include, but are not limited to:

• Applying paint by brush, roller or spray to a variety of surfaces such as wood, wallboard, plaster, stucco, metal, concrete, or other types of surfaces found within the interior of a building;

• All preparation work such as setting up scaffolding, sanding, removing old paint or asbestos, masking with tape or other materials, and cleanup work;

• Hanging or removing wallpaper, including cleaning or scraping walls to ensure the wallpaper will adhere to the surface; applying adhesive to the wall surface, the wallpaper, or both; matching patterns and applying wallpaper to the surface; brushing smooth to remove air pockets; and repeating until the entire job is complete;

• Refinishing or resurfacing of tubs, sinks, appliances, and countertops.

Exclusions:

• Worker hours engaged in exterior painting of buildings or structures are reported separately in classification 0504. Classifications 0521 and 0504 may be assigned to the same employer provided accurate records are maintained which distinguish interior building painting contracts from exterior building or structure painting contracts;

• Worker hours engaged in waterproofing buildings or structures N.O.C., pressure washing services or sandblasting of buildings or

structures, lead paint abatement, and the exterior painting of buildings or structures, including interior/exterior tanks which are all reported separately in classification 0504;

• Painting murals or other artwork on the interior of buildings is classified in 4109;

• Worker hours engaged in painting murals or other artwork on the exterior of buildings are reported separately in classification 0403.

Special notes:

• See asbestos certification and training requirements at www.lni.wa.gov.

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

• Classification 0521 is a construction industry classification (see WAC 296-17-31013).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0603 Classification 0603.

0603-00 Machinery: Installation, service and/or repair, N.O.C.; Millwright work, N.O.C.

~~((Applies to contractors engaged in the installation, service and/or repair of heavy machinery or equipment at a customer's location which is not covered by another classification (N.O.C.). Millwright work and the service or repair of engines and gas machines is also included. A millwright is a technician who specializes in installing and repairing industrial machinery. Typical customers include, but are not limited to, wood, metal and plastic manufacturing plants, fuel refineries, and mills. Types of machinery installed and repaired includes, but is not limited to, escalators, conveyor systems, printing presses, lathes, mill saws, dairy equipment and wind machines. (Store operations of dairy equipment/supply dealers or wind machine dealers are to be reported separately in classification 6407.) Work contemplated by this classification includes, but is not limited to, the pouring of a concrete pad on which the machinery will be installed, cutting and welding of brackets and mountings, assembling component parts, any incidental electrical connections needed to complete the installation, and calibrating the controls and testing the machinery's operation when done by employees of an employer having operations subject to this classification. Placement of heavy machinery must often be done with cranes or by rigging hoists. This classification also includes the dismantling and removal of machinery and equipment covered by this classification.~~

~~0603-05 Dynamos, electrical generators and turbines: Installation, service and/or repair~~

~~Applies to contractors engaged in the installation, service and/or repair of dynamos, electrical generators and turbines at a customer's location. A dynamo is a generator of direct electrical current; a turbine is a mechanism that converts moving fluid into mechanical power. Customers include, but are not limited to, electrical utilities, manufacturing plants, mills, and telecommunications companies. Work contemplated by this classification includes, but is not limited to, preparation of a concrete pad on which the machinery will~~

be installed, cutting and welding of brackets and mountings, assembly of component parts if necessary, any incidental electrical connections needed to complete the installation, and calibrating and testing the machinery's operation when done by employees of an employer having operations subject to this classification. Placement of heavy machinery must often be done with cranes or by rigging hoists. Also included is the dismantling and removal of dynamos, generators and turbines.

This classification excludes the installation of underground overhead power lines and poles by an electric utility company which is to be reported separately in classification 1301; the installation of overhead power lines by a nonelectric utility contractor which is to be reported separately in classification 0509; and the installation of underground power lines by a nonelectric utility contractor which is to be reported separately in classification 0107.

0603-07 Industrial plant maintenance by contractor

Applies to contractors engaged in maintaining, repairing and installing machinery on a long-term contract basis for customers at the customers' location. Customers include, but are not limited to, manufacturing or chemical plants, petroleum refineries, food processing plants and mills. Work contemplated by this classification includes all routine maintenance and repair of a customer's equipment such as, but not limited to, cleaning, oiling and regularly scheduled maintenance and replacement of machinery or machinery parts, equipment and other mechanical installations that are part of the customer's building when done by employees of an employer having operations subject to this classification.

0603-08 Metal playground equipment, portable bleachers or stages, above ground swimming pools: Installation, dismantling, and/or repair

Applies to contractors engaged in the installation, dismantling, and/or repair of metal playground equipment, portable bleachers or stages, and above ground swimming pools. Playground equipment includes, but is not limited to, swings, monkey bars, merry-go-rounds, and slides. Work contemplated by this classification includes all operations necessary for the erection of metal playground equipment including, but not limited to, boring holes in the ground (usually with an auger) into which the various pieces of equipment will be set in concrete, any incidental cutting, welding, drilling and bolting of the tubular steel components which are usually from one to four inches in diameter, and fastening on the chains, swings, handlebars, sliding surface, platforms, bench seats, or other components. This classification also includes the application of any finish material or paint when done by employees of an employer having operations subject to this classification.

This classification excludes the installation of wood playground equipment which is to be reported separately in classification 0516.

0603-09 Commercial equipment: Installation, dismantling, service, and/or repair

Applies to contractors engaged in the installation, dismantling, service, and/or repair of commercial equipment such as, but not limited to, commercial dishwashing units, bakery and restaurant ovens, stoves, grills, sanitizers, steam tables, car washing equipment, commercial laundry equipment, electric entry doors, dry cleaning equipment, gas pumps, or parimutuel totalizer equipment at horse racing facilities. Work contemplated by this classification includes, but is not limited to, placing and leveling the equipment, any assembly of

component parts if necessary, connecting or bolting to the wall or floor, making any necessary incidental plumbing or electrical connections, and calibrating and testing the equipment when done by employees of an employer having operations subject to this classification. Some pieces of equipment in this classification may be large enough that they must be moved and positioned with hoists or cranes. Also included is the dismantling and removal of commercial equipment.))

Applies to:

• Installation, service and/or repair of heavy machinery or equipment at a customer's location, not covered by another classification (N.O.C.).

• Millwright work and the service or repair of engines and gas machines. A millwright is a technician who specializes in installing and repairing industrial machinery.

Typical customers include, but are not limited to:

- Wood, metal, and plastic manufacturing plants;
- Fuel refineries;
- Mills.

Types of machinery installed and repaired include, but are not limited to:

- Conveyor systems;
- Dairy equipment;
- Escalators;
- Lathes;
- Mill saws;
- Printing presses;
- Wind machines.

Work processes and activities include, but are not limited to:

- Pouring concrete pads to hold the machinery;
- Cutting and welding brackets and mountings;
- Assembling component parts;
- Incidental electrical connections needed to complete the installation;
- Placement of heavy machinery with cranes or by rigging hoists;
- Calibrating the controls and testing the machinery's operation when done by employees of an employer having operations subject to this classification;
- Dismantling and removal of machinery and equipment covered by this classification.

Exclusions:

• Worker hours engaged in store operations of dairy equipment/supply dealers or wind machine dealers are reported separately in classification 6407.

0603-05 Dynamos, electrical generators and turbines: Installation, service and/or repair

Applies to:

Installation, service and/or repair of dynamos, electrical generators, and turbines at a customer's location. A dynamo is a generator of direct electrical current; a turbine is a mechanism that converts moving fluid into mechanical power.

Typical customers include, but are not limited to:

- Electrical utilities;
- Manufacturing plants;

- Mills;
- Telecommunications companies.

Work processes and activities include, but are not limited to:

- Pouring concrete pads to hold the machinery;
- Cutting and welding brackets and mountings;
- Assembling component parts;
- Incidental electrical connections needed to complete the installation;
- Placement of heavy machinery with cranes or by rigging hoists;
- Calibrating the controls and testing the machinery's operation when done by employees of an employer having operations subject to this classification;
- Dismantling and removal of dynamos, generators, and turbines.

Exclusions:

- Installation of underground or overhead power lines and poles by an electric utility company is classified in 1301;
- Installation of overhead power lines by a nonelectric utility contractor is classified in 0509;
- Installation of underground power lines by a nonelectric utility contractor is classified in 0107.

0603-07 Industrial plant maintenance by contractor

Applies to:

Businesses engaged in maintaining, repairing, and installing machinery on a long-term contract basis for customers at the customers' location.

Typical customers include, but are not limited to:

- Manufacturing plants;
- Chemical plants;
- Petroleum refineries;
- Food processing plants;
- Mills.

Work processes and activities include all routine maintenance and repair of a customer's equipment, such as, but not limited to:

- Cleaning;
- Oiling;
- Regularly scheduled maintenance;
- Replacement of machinery or machinery parts;
- Installing equipment and other mechanical installations that are part of the customer's building when done by employees of an employer having operations subject to this classification.

0603-08 Metal playground equipment, portable bleachers or stages, above ground swimming pools: Installation, dismantling, and/or repair

Applies to:

Installation, dismantling, and/or repair of metal playground equipment, portable bleachers or stages, and above ground swimming pools.

Playground equipment includes, but is not limited to:

- Merry-go-rounds;
- Monkey bars;
- Slides;
- Swings.

Work processes and activities include all operations necessary for the erection of metal playground equipment including, but not limited to:

- Boring holes in the ground, usually with an auger, for various pieces of equipment to be set in and held in place with concrete;
- Cutting, welding, drilling, and bolting of tubular steel components which are usually from one to four inches in diameter;
- Fastening on chains, swings, handlebars, sliding surface, platforms, bench seats, or other components;
- Applying any finish material or paint when done by employees of an employer having operations subject to this classification.

Exclusions:

Installation of wood playground equipment is classified in 0516.

0603-09 Commercial equipment: Installation, dismantling, service, and/or repair**Applies to:**

Installation, dismantling, service, and/or repair of commercial equipment.

Commercial equipment includes, but is not limited to:

- Commercial dishwashing units;
- Bakery or restaurant ovens, stoves, grills, sanitizers, or steam tables;
- Car washing equipment;
- Commercial laundry equipment;
- Electric entry doors;
- Dry cleaning equipment;
- Gas pumps;
- Parimutuel totalizer equipment at horse racing facilities.

Work processes and activities include, but are not limited to:

- Placing and leveling the equipment;
- Assembly of component parts;
- Connecting or bolting to the wall or floor;
- Making any necessary incidental plumbing or electrical connections;
- Calibrating and testing the equipment when done by employees of an employer having operations subject to this classification;
- Dismantling and removal of commercial equipment;
- Some pieces of equipment in this classification may be large enough that they must be moved and positioned with hoists or cranes.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-1106 Classification 1106.**1106-00 Rental stores, N.O.C.; Truck canopy sales**

((Applies to establishments engaged in the rental of items, not covered by another classification (N.O.C.), such as hand tools, air compressors, automotive tools, baby equipment, convalescent equipment, exercise equipment, floor care equipment, pressure washers, party and banquet equipment, light construction tools or equipment such as saws, drills, and sanders, and lawn and garden equipment, as opposed to machinery or larger commercial or industrial equipment. The tools and

equipment are generally rented to homeowners for use on their property. Rental stores within this classification rent a variety of tools and equipment unlike specialty rental stores that specialize in one type of product. This classification includes clerical office personnel, sales personnel, as well as the maintenance and repair of rented goods when performed by employees of the rental store. This classification also applies to establishments engaged in the sale and installation of truck canopies and related accessories, but who do not sell other types of vehicles or trailers.

This classification excludes establishments engaged in the rental of commercial or industrial equipment and/or machinery such as, but not limited to, bulldozers, tractors, and backhoes which are to be reported separately in classification 6409; establishments engaged in the rental of farm machinery equipment which are to be reported separately in classification 6408; establishments engaged in the rental of vehicles which are to be reported separately in the applicable classification; establishments engaged in the rental of sporting goods which are to be reported separately in classification 6406; establishments engaged in the rental of clothing or costumes which are to be reported separately in classification 6305; and establishments engaged in the rental of furniture which are to be reported separately in classification 6306.)

Applies to:

- Businesses engaged in the rental of items, not covered by another classification N.O.C.;
- Businesses selling and installing truck canopies and related accessories, but who do not sell other types of vehicles or trailers.

Products rented include, but are not limited to:

- Air compressors;
- Automotive tools;
- Baby equipment;
- Convalescent equipment;
- Exercise equipment;
- Floor care equipment;
- Hand tools;
- Lawn and garden equipment;
- Light construction tools or equipment (saws, drills, sanders);
- Party and banquet equipment;
- Pressure washers.

Note: The tools and equipment are generally rented to homeowners for use on their property. Rental stores within this classification rent a variety of tools and equipment unlike specialty rental stores that specialize in one type of product.

Work occupations and activities include, but are not limited to:

- Clerical office personnel;
- Sales personnel;
- Maintenance and repair of rented goods when performed by employees of the rental store.

Exclusions:

- Rental of commercial or industrial equipment and/or machinery such as, but not limited to, bulldozers, tractors, and backhoes is classified in 6409;
- Rental of farm machinery equipment is classified in 6408;
- Rental of vehicles is classified in the applicable classification;
- Rental of sporting goods is classified in 6406;
- Rental of clothing or costumes is classified in 6305; and

- Rental of furniture is classified in 6306.

AMENDATORY SECTION (Amending WSR 09-16-107, filed 8/4/09, effective 1/1/10)

WAC 296-17A-1109 Classification 1109.

1109-00 Automobile or truck towing services, N.O.C.

~~((Applies to establishments engaged in providing towing services for hire to others which are not covered by another classification (N.O.C.). For purposes of this classification "towing services for hire" means, but is not limited to, the towing of disabled vehicles to a shop (that is unrelated to the towing service) for repair, the recovery of repossessed vehicles for others by tow truck, roadside assistance during snow, ice or flooding to recover or free stuck vehicles, and the towing in of disabled vehicles to a secured yard for insurance or law enforcement agencies. It is common for towing companies to also operate a vehicle repair garage or service center in conjunction with the towing service. Auto service centers and repair garages, auto body shops and wrecking yard operations are to be reported separately in the applicable service or repair classification provided that the conditions of the general reporting rules covering the division of worker hours have been met. Tow truck dispatchers who have no other duties may be reported separately in classification 4904 provided that the conditions of the standard exception general reporting rules have been met.))~~

Applies to:

Businesses providing towing services for hire to others which are not covered by another classification (N.O.C.).

For purposes of this classification "towing services for hire" means, but is not limited to:

- Towing disabled vehicles to a shop that is unrelated to the towing service for repair;
- Recovering repossessed vehicles for others by tow truck;
- Roadside assistance during snow, ice or flooding to recover or free stuck vehicles;
- Towing disabled vehicles to a secured yard for insurance or law enforcement agencies.

Exclusions:

Auto service centers and repair garages, auto body shops and wrecking yard operations are reported separately in the applicable service or repair classification provided that the conditions of the general reporting rules covering the division of worker hours have been met.

Tow truck dispatchers who have no other duties may be reported separately in classification 4904 provided that the conditions of the standard exception general reporting rules have been met.

Special note: Towing is common to many classifications. Employers offering towing services should be contacted to verify whether the towing service they provide is only in connection with their auto repair, auto body or wrecking yard (*towing service not for hire*), or provided as a general service unrelated to their repair garage (*towing services for hire*). Only towing services for hire are to be assigned to classification 1109. If a business provides both towing services

for hire and not for hire, worker hours for drivers and their assistants may be divided between this classification and the applicable repair garage classification provided that the conditions of the general reporting rule covering the division of worker hours has been met. Otherwise, all driver and assistant hours are to be assigned to the highest rated classification applicable to the business.

AMENDATORY SECTION (Amending WSR 17-11-120, filed 5/23/17, effective 7/1/17)

WAC 296-17A-1304 Classification 1304.

1304-00 Telecommunication service providers - Administrative, office, and sales personnel

~~((Applies to the administrative and clerical office personnel of establishments engaged in providing telecommunication services which enable two or more parties to converse or transmit coded data. For purposes of this classification, administrative personnel includes clerical office, sales, data processing, exchange operators, customer service, marketing, and retail telephone store (when operated by the telephone company) sales personnel.~~

~~This classification excludes all other telephone company employees who are to be reported separately in classification 1303.~~

~~1304-01 Telegraph companies - Clerical office and sales personnel~~

~~Applies to administrative and clerical office personnel of establishments engaged in providing telecommunication services which enable printed messages (telegrams) or moneygrams to be transmitted from one agent to another for receipt by a designated party. For purposes of this classification, administrative personnel includes clerical office, sales, data processing, customer service, marketing, cashiers and operators of telegraph, teletype or other transmitting and receiving equipment.~~

~~This classification excludes all other telegraph company employees who are to be reported separately in classification 1303.))~~

Applies to:

Administrative and clerical office personnel of businesses engaged in providing telecommunication services which enable two or more parties to converse or transmit coded data.

Administrative occupations include, but are not limited to:

- Clerical office;
- Customer service;
- Data processing;
- Exchange operators;
- Marketing;
- Retail telephone store (when operated by the telephone company) sales personnel;
- Sales personnel.

Exclusions:

- All other telephone company employees are classified in 1303.

1304-01 Telegraph companies - Clerical office and sales personnel

Applies to:

Administrative and clerical office personnel of businesses engaged in providing telecommunication services which enable printed messages (telegrams) or moneygrams to be transmitted from one agent to another for receipt by a designated party.

Administrative occupations include, but are not limited to:

- Cashiers;
- Clerical office;
- Customer service;
- Data processing;
- Marketing;
- Operators of telegraph, teletype or other transmitting and receiving equipment;
- Sales personnel.

Exclusions:

- All other telegraph company employees are classified in 1303.

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

WAC 296-17A-1407 Classification 1407.

1407-00 Bus companies

~~((Applies to establishments engaged in providing transportation services such as, but not limited to, charter and tour bus, contract school bus, shuttle van, and nonmunicipal, scheduled bus systems. Work contemplated by this classification includes operation of the vehicle and related loading/unloading duties, cleaning, maintenance and ordinary repair of all facilities, equipment, and vehicles, all bus terminal employment except for office personnel. Ticket sellers and dispatchers may be reported separately in classification 4904 provided that they do not handle baggage and that all of the conditions of the standard exception general reporting rules have been met.~~

~~This classification excludes: Municipal transit and bus service provided by a county or taxing district which is to be reported separately in classification 1501; municipal transit and bus service provided by a city or town which is to be reported separately in classification 0803; taxicab companies which are to be reported separately in classification 1401; cabulance and paratransit companies which are to be reported separately in classification 1404; and drivers employed by a limousine company who are to be reported separately in classification 6301.~~

~~**Special note:** Establishments subject to this classification are to report actual hours worked for each driver. However, the hours are to be capped at 520 hours per driver per quarter.))~~

Applies to:

Businesses providing transportation services including, but not limited to:

- Charter and tour bus;
- Contract school bus;
- Nonmunicipal, scheduled bus systems;
- Shuttle van.

Work activities include, but are not limited to:

- All bus terminal employment except for certain qualifying office personnel;
- Cleaning, maintenance, and ordinary repair of all facilities, equipment, and vehicles;
- Loading/unloading duties;
- Operation of the vehicle.

Note: Ticket sellers and dispatchers may be reported separately in classification 4904 provided that they do not handle baggage and that all of the conditions of the standard exception general reporting rules have been met.

Exclusions:

- Municipal transit and bus services provided by a county or taxing district are classified in 1501;
- Municipal transit and bus services provided by a city or town are classified in 0803;
- Taxicab companies and transportation network companies are classified in 1401;
- Cabulance and paratransit companies are classified in 1404;
- Drivers employed by a limousine company are classified in 6301.

Special note: Businesses subject to this classification are to report actual hours worked for each driver. However, the hours are to be capped at 520 hours per driver per quarter.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1802 Classification 1802.

1802-00 Aluminum smelting

~~((Applies to establishments engaged in the primary smelting of aluminum from alumina using an electrolytic reduction process. This classification includes the alloying and casting of sheet ingots, T-ingots, rolling ingots, notched ingots, sows, pigs, extrusion logs, extrusion billets and other primary production shapes when performed by a primary producer subject to this classification. Aluminum is produced from alumina. Alumina is extracted from bauxite which is an ore found in the earth's crust. Bauxite contains approximately 50% aluminum oxide (alumina) together with iron oxide, silica, and titanium oxide. The aluminum smelting process is two-fold; first, pure aluminum oxide is produced, then the aluminum is decomposed from the oxygen by an electrolytic treatment. The process is complex, labor intensive and power intensive. The use of an electric current causes pure aluminum to go to the cathode (part of the smelting structure) and accumulates as a layer floating on the molten salt in a large vat. This aluminum has a purity of 99.99% and is removed from time to time and cast into suitable shapes from molds.~~

~~This classification excludes secondary processors who do not reduce aluminum from alumina, but whose principle business is casting, rolling, extruding, foiling or recycling aluminum alloys from molten aluminum, primary production shapes or used scrap and dross which are to be reported separately in the applicable classification; ore reduction which is to be reported separately in classification 1701; and open pit or underground mining operations which are to be reported separately in the classification applicable to the mining being performed.))~~

Applies to:

Businesses engaged in the primary smelting of aluminum from alumina using an electrolytic reduction process.

Work activities include, but are not limited to:

- Extracting alumina from bauxite which is an ore found in the earth's crust; bauxite contains approximately 50 percent aluminum oxide (alumina) together with iron oxide, silica, and titanium oxide;
- Producing pure aluminum oxide;
- Decomposing aluminum from the oxygen by an electrolytic treatment; this process is complex, labor-intensive and power intensive;
- Using an electric current to cause pure aluminum to go to the cathode (part of the smelting structure), which accumulates as a layer floating on the molten salt in a large vat;
- Removing the pure aluminum (99.99 percent);
- Alloying and casting into suitable shapes from molds.

Products manufactured include, but are not limited to:

- Extrusion billets.
- Extrusion logs.
- Notched ingots.
- Pigs.
- Rolling ingots.
- Sheet ingots.
- Sows.
- T-ingots.
- Other primary production shapes when performed by a primary producer subject to this classification.

Exclusions:

- Secondary processors who do not reduce aluminum from alumina, but whose principle business is casting, rolling, extruding, foiling or recycling aluminum alloys from molten aluminum, primary production shapes or used scrap and dross are classified in the applicable classification.
- Ore reduction is classified in 1701.
- Open pit or underground mining operations are classified in the classification applicable to the mining being performed

AMENDATORY SECTION (Amending WSR 08-15-132, filed 7/22/08, effective 10/1/08)

WAC 296-17A-2004 Classification 2004.

2004-21 Iron or steel merchants; wire rope and cable dealers

~~((Applies to establishments engaged as iron or steel merchants or as dealers of wire rope, cable, or metal conduit. This classification includes the merchandising of nonferrous metals such as, but not limited to, copper, brass, or aluminum. This classification is distinguished from scrap metal dealers in classification 0604 who deal primarily in used metal as opposed to merchants in classification 2004 who sell new goods. Iron or steel merchants receive metal in the form of beams, sheets, plates, bars, rods, pipe, rounds, channels, angles, tubes, or coils from the mills which they unload with overhead cranes, and store them in their shop or yard. Using power equipment such as shears, hacksaws, drills, benders, and cutting torches, they are cut, sheared, and formed to customer specifications. Wire rope and cable dealers use coilers to wind the wire rope or cable from large spools~~

~~onto smaller spools, and use saws or other cutting tools to cut it to length and large hydraulic presses to attach sockets, pulleys and other hardware to wire rope to form rigging used by the fishing, logging, and construction industry.~~

~~This classification excludes scrap metal and junk dealers which are to be reported separately in classification 0604, and rebar fabricators which are to be reported separately in classification 5209.)~~

Applies to:

Businesses operating as iron or steel merchants or as dealers of wire rope, cable, or metal conduit. Also included is the merchandising of nonferrous metals such as, but not limited to, copper, brass, or aluminum.

This classification is distinguished from scrap metal dealers in classification 0604 who deal primarily in used metal as opposed to merchants in classification 2004 who sell new goods.

Raw metals may be received from mills in various forms including, but not limited to:

- Angles;
- Bars;
- Beams;
- Cables;
- Channels;
- Coils;
- Pipes;
- Plates;
- Rods;
- Rounds;
- Sheets;
- Tubes;
- Wire ropes.

Work activities include, but are not limited to:

- Receiving and unloading metal with overhead cranes.
- Storing metals in the shop or yard.
- Using power equipment to form metal to customer's specification.
- Winding wire rope or cable from large spools onto smaller spools.
- Cutting and shearing metals to length.
- Using hydraulic presses for attaching sockets, pulleys, and other hardware to wire rope to form rigging used by the fishing, logging, and construction industry.

Equipment used include, but are not limited to:

- Benders;
- Coilers;
- Cutting torches;
- Drills;
- Hacksaws;
- Hydraulic presses;
- Saws;
- Shears;
- Torches.

Exclusions:

- Scrap metal and junk dealers are classified in 0604.
- Rebar fabricators are classified in 5209.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2007 Classification 2007.

2007-02 Grain elevator or warehouse

~~((Applies to establishments engaged in providing grain elevator or warehouse facilities. These facilities may range from hundred thousand bushel country elevators to multimillion bushel terminal elevators, the latter of which are located near railroad lines or seaports. Grain may be stored in elevators for years, depending on market conditions. Grain elevators operate year round or seasonally and may offer a variety of services ranging from storage only to grain milling (see exclusions below). Typical operations in this classification include weighing, grading, cleaning and drying of the grain, and conveyance to the storage lofts. Most grain elevators also provide a brokerage service for their customers.~~

~~This classification excludes grain milling which is to be reported separately in classification 2101 and bean or pea elevators which are to be reported separately in classification 2007-03.~~

2007-03 Bean or pea elevator or warehouse

~~Applies to establishments engaged in providing bean or pea elevator or warehouse facilities. Bean or pea elevators run all year round or seasonally and may offer a variety of services ranging from storage only to brokerage services. Typical operations in this classification include weighing, grading, cleaning and drying of the bean or pea, and conveyance to the storage lofts.~~

~~This classification excludes seed merchants who are to be reported separately in classification 2101; grain elevators which are to be reported separately in classification 2007-02; and vegetable cannery or processing operations and pea vining by cannery employees which are to be reported separately in classification 3902.)~~

Applies to:

Businesses providing grain elevator or warehouse facilities. These facilities may range from hundred thousand bushel country elevators to multimillion bushel terminal elevators located near railroad lines or seaports.

Work activities include, but are not limited to:

- Providing a brokerage service for their customers;
- Weighing;
- Grading;
- Cleaning;
- Drying;
- Conveying to the storage lofts;
- Storing. Grain may be stored in elevators for years, depending on market conditions.

Exclusions:

- Bean or pea elevators are classified in 2007-03.
- Worker hours milling grain must be reported separately in classification in 2101.

2007-03 Bean or pea elevator or warehouse

Applies to:

Businesses providing bean or pea elevator or warehouse facilities.

Work activities include, but are not limited to:

- Providing a brokerage service for their customers;
- Weighing;
- Grading;
- Cleaning;
- Drying;
- Conveying to the storage lofts;
- Storing. Beans and peas may be stored in elevators for years, depending on market conditions.

Exclusions:

- Grain elevators are classified in 2007-02.
- Seed merchants are classified in 2101.
- Vegetable cannery or processing operations and pea vining by cannery employees are classified in 3902.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

WAC 296-17A-2008 Classification 2008.**2008-01 Warehouses - Field bonded**

~~((Applies to establishments engaged in providing bonded warehouse services at the customer's location. Field bonding involves appropriating a warehouse (or portion of one), that is owned by the customer, for the purpose of segregating and securing a portion of that customer's merchandise to be used as collateral for a bank loan. The field bonding company will catalog the merchandise that is involved in the transaction, issue a receipt (the receipt is presented as collateral for the loan), and ensure its security and value for the length of the contract. The field bonding company is not responsible for the maintenance of the facility and doesn't become involved in handling, moving or shipping the goods. Work contemplated by this classification is limited to employees who catalog the goods being held, security guards, and clerical help employed at the secured location.~~

~~This classification excludes drivers who are to be reported separately in classification 1102.))~~

Applies to:

Businesses providing bonded warehouse services at the customer's location. The field bonding company is not responsible for the maintenance of the facility and does not become involved in handling, moving, or shipping the goods.

Field bonding includes:

- Appropriating a warehouse (or portion of one), that is owned by the customer, for the purpose of segregating and securing a portion of that customer's merchandise to be used as collateral for a bank loan.
- Cataloging the merchandise that is involved in the transaction.
- Issuing a receipt (the receipt is presented as collateral for the loan).
- Ensuring the security and value of the merchandise for the length of the contract.

Work activities contemplated by this classification are limited to:

- Employees who catalog the goods being held.
- Security guards.

- Clerical help employed at the secured location.

Exclusions:

Drivers are classified in 1102.

Special note: Traditional warehousing establishments (such as those described in classification 2102) may be "bonded" in that they can assure their customers that goods regulated by the Bureau of Alcohol, Tobacco and Firearms, or goods awaiting inspection by U.S. Customs, will remain secured. This type of bonding is similar in that it is an assurance of value and safekeeping, but differs from classification 2008 in that the goods are delivered to, and held at, the warehouse company's own facility.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2101 Classification 2101.

2101-00 Grain milling; flour mills; feed mills; feed manufacturing

~~((Applies to establishments engaged in milling grain into flour or meal or in the manufacture of dry (powdered, granule or pellet) feed. Operations contemplated by this classification include the receipt of grain (wheat, barley, oats, corn) in bulk or bag which is purchased from others, grinding or milling the grain to either a coarse or a fine powder, adding binder (molasses), adding and mixing ingredients (depending on product being made), and packaging. This classification includes delivery of products in packaged or bulk form to customers.~~

~~This classification excludes establishments engaged in the further processing of flour or meal to manufacture food products which are to be reported separately in the applicable food manufacturing classification, and establishments engaged in the manufacture of canned or frozen animal food which are to be reported separately in classification 3902.~~

2101-01 Hay, grain or feed dealers

~~Applies to establishments engaged in the sale of grain, feed, and hay to others. Operations contemplated by this classification are limited to the purchase of hay, grain, or feed in bulk from others and the subsequent resale of these items in bulk to others. Establishments subject to this classification may have a small store operation, a substantial storage facility, or they may haul product from location to location all of which are included within the scope of this classification when done by employees of employers subject to this classification.~~

~~This classification excludes the sale of hay by farm operations which is to be reported separately in classification 4808, and establishments engaged in the manufacture of animal feed which are to be reported separately in classification 2101-00.~~

2101-02 Seed processing

~~Applies to establishments engaged in the processing of agricultural seeds for wholesale or retail sales. These establishments receive produce such as wheat, barley, alfalfa, lentils, vegetables, fruit or flowers from farmers the seed company has contracted with, or in the case of larger seed companies, they may have their own fields for raising the seed crop. Work contemplated by this classification~~

includes, but is not limited to, cleaning, grading, crushing, separating, and packaging of the product (either by hand or by machine). Machinery includes, but is not limited to, screening machines, air gravity separators, clippers, tumbling drums for polishing, and bagging machines. This classification also includes trial plots or lab research facilities used to develop new seed hybrids and improve existing varieties, consultation services provided to the farmers during planting and harvesting seasons, and custom milling work conducted at the farmer's premises. Also included in this classification are establishments engaged exclusively in providing grain or seed drying services.

This classification excludes growing of seeds, other than on a trial plot, which is to be reported separately in the appropriate agricultural classification; merchants engaged in hand packaging seeds that have been processed by others who are to be reported separately in classification 6309-06; grain milling which is to be reported separately in classification 2101-00; hay/grain/feed dealers which are to be reported separately in classification 2101-01; and grain or bean/pea elevators which are to be reported separately in classification 2007.

2101-05 Hop pellet manufacturing

Applies to establishments engaged in the manufacture of hop pellets. Hop pellets are one of several ingredients used by breweries in the manufacture of beer and ale. Operations contemplated by this classification include, but are not limited to, cold storage room operations where bales of hops are kept, bale breaking and grinding of hops into powder, blending of powders and additives, testing of hops, pelletizing, packaging, and shipping. Establishments subject to this classification may own the hops or do custom blending for others.

This classification excludes establishments engaged in the manufacture of hop extract which are to be reported separately in classification 3701.

Special note: Hop pellets are often referred to as a flavoring so care should be taken, when another classification is being considered, to determine the process used.)

Applies to:

- Businesses milling grain into flour or meal.
- Businesses manufacturing dry feed (powdered, granule, or pellet).

Work activities include, but are not limited to:

- Receiving grain purchased from others; such as wheat, barley, oats, corn;
- Grinding or milling the grain to a coarse or fine powder;
- Adding ingredients;
- Packaging;
- Delivery of packaged or bulk products.

Exclusions:

- Manufacturing of food products is classified in the applicable food manufacturing classification.
- Manufacturing of canned or frozen animal food is classified in 3902.

2101-01 Hay, grain, or feed dealers

Applies to:

Businesses selling hay, grain, and feed to others.

Work activities are limited to:

- Purchasing hay, grain, or feed in bulk;
- Reselling hay, grain, or feed in bulk;
- Operating a small store;
- Operating a storage facility;
- Hauling the product from location to location.

Exclusions:

- Manufacturing animal feed is classified in 2101-00.
- Farm operations selling hay are classified in 4808.

2101-02 Seed processing**Applies to:**

Businesses processing agricultural seeds for wholesale or retail sales.

Work activities include, but are not limited to:

- Receiving produce (wheat, barley, alfalfa, lentils, vegetables, fruit, flowers);
- Cleaning;
- Grading;
- Crushing;
- Separating;
- Packaging (either by hand or machine);
- Providing grain or seed drying services;
- Operating trial plots or lab research facilities used to develop new seed hybrids and improve existing varieties;
- Consulting services provided to the farmers during planting and harvesting seasons;
- Custom milling work conducted at the farmer's premises.

Machinery includes, but is not limited to:

- Screening machines;
- Air gravity separators;
- Clippers;
- Tumbling drums for polishing;
- Bagging machines.

Exclusions:

- Growing of seeds, other than on a trial plot, is classified in the appropriate agricultural classification.
- Hand-packaging and selling seeds that have been processed by others is classified in 6309-06.
- Grain milling is classified in 2101-00.
- Hay, grain, or feed dealers are classified in 2101-01.
- Grain, bean, or pea elevators are classified in 2007.

2101-05 Hop pellet manufacturing**Applies to:**

Businesses manufacturing hop pellets. Hop pellets are one of several ingredients used by breweries in the manufacture of beer and ale.

Work activities include, but are not limited to:

- Operating a cold storage room where bales of hops are kept;
- Bale breaking;
- Grinding hops into powder;
- Blending of powders and additives;
- Testing of hops;
- Pelletizing;

- Packaging;
- Shipping.

Establishments subject to this classification may own the hops or do custom blending for others.

Special note: Hop pellets are often referred to as a flavoring, so care should be taken when another classification is being considered to determine the process used.

Exclusion:

- Manufacturing hop extract is classified in 3701.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2104 Classification 2104.

2104-01 Vegetable packing - Fresh

~~((Applies to establishments engaged in the packing of fresh vegetables. These operations are usually located in produce growing areas and are generally seasonal. The vegetables are generally brought to the packing plant by the farmer or co-op drivers, but some packing plants may employ their own drivers to pick up the product from the local farms or co-op. Typical activities of the packing operation include, but are not limited to, sorting, grading, cleaning, trimming, packing and shipping of the vegetables. Various packing containers such as plastic bags, boxes, barrels, crates, and baskets may be used. The packing may be done by hand for fragile vegetables or by machine for the more sturdy produce. This classification includes cold storage operations if it is used solely for the storage of their own produce. Drivers employed by these establishments who pick up the vegetables from the suppliers or deliver the packaged product to the market are included in this classification. A farm operation that grows and packs their own fresh vegetables or packs other farms' fresh vegetables in addition to their own is to be assigned this classification (2104) for the packing operation. However, if the farmer only sorts and stores the fresh vegetables, the appropriate agricultural classification is applicable to both the growing and sorting/storage operations. This classification also includes establishments engaged in processing potatoes into seed potatoes. Processing plants receive whole potatoes from their suppliers. At the plant the potatoes are moved along on a conveyor belt, cleaned as appropriate, cut into small pieces (usually quarters), and treated with a fumigant powder or other sterilizer. The smaller pieces, referred to as "seed potatoes," are delivered to farmers who plant them for future crops.~~

~~This classification excludes fresh fruit packing which is to be reported separately in classification 2104-02; cannery or freezing operations and/or any processing of the vegetables which are to be reported separately in classification 3902; and cold storage operations not exclusively part of a packing operation which are to be reported separately in either classification 4401 or 4404.~~

2104-02 Fruit packing - Fresh

~~Applies to establishments engaged in the packing of fresh fruit. These operations are usually located in produce growing areas and generally are seasonal. The fruit may be brought to the packing plant by the farmer or co-op drivers, but some packing plants may employ their~~

own drivers to pick up the product from the local farms or co-op. Typical activities of the packing operation include, but are not limited to, sorting, grading, cleaning, trimming, packing and shipping the fruit. Various packing containers such as plastic bags, boxes, barrels, crates and baskets may be used. The packing may be done by hand for fragile fruit or by machine for the more sturdy produce. This classification includes any cold storage operations if it is used solely for the storage of their own produce. Drivers employed by these establishments who pick up the fruit from the farmer or deliver the packaged product to the market are included in this classification. A farm operation that grows and packs their own fresh fruit, or packs other farms' fresh fruit in addition to their own, is to be assigned this classification (2104) for the packing operation. However, if the farmer only sorts and stores the fresh fruit the appropriate agricultural classification is applicable to both the growing and sorting/storage operations.

This classification excludes fresh vegetable packing which is reported separately in classification 2104-01; cannery or freezing operations and/or any processing of the fruit which are to be reported separately in classification 3902; and cold storage operations not exclusively part of a packing operation which is reported separately in either classification 4401 or 4404.)

Applies to:

- Businesses packing fresh vegetables. These operations are usually located in produce growing areas and are generally seasonal.
- Businesses processing seed potatoes.

Work activities include, but are not limited to:

- Picking up the product from local farms or co-op;
- Sorting;
- Grading;
- Cleaning;
- Trimming;
- Packing - By hand for fragile vegetables or by machine for the more sturdy produce;
- Shipping of the vegetables;
- Delivering of packaged product to market;
- Cold storage operations if used solely for the storage of their own produce;
- Processing of seed potatoes - Usually whole potatoes are cleaned, cut into small pieces, and treated with a fumigant powder or other sterilizer.

Note: A farm operation that grows and packs their own fresh vegetables or packs other farms' fresh vegetables in addition to their own is to be assigned this classification (2104) for the packing operation. However, if the farmer only sorts and stores the fresh vegetables, the appropriate agricultural classification is applicable to both the growing and sorting/storage operations.

Exclusions:

- Fresh fruit packing is classified in 2104-02;
- Cannery or freezing operations and/or any processing of the vegetables is classified in 3902;
- Cold storage operations not exclusively part of a packing operation are classified in 4401 or 4404.

2104-02 Fruit packing - Fresh

Applies to:

Businesses packing fresh fruit. These operations are usually located in produce growing areas and generally are seasonal.

Work activities include, but are not limited to:

- Picking up the product from local farms or co-op;
- Sorting;
- Grading;
- Cleaning;
- Trimming;
- Packing - By hand for fragile fruits or by machine for the more sturdy produce;
- Shipping of the fruit;
- Delivering of packaged product to market;
- Cold storage operations if used solely for the storage of their own produce.

Note: A farm operation that grows and packs their own fresh fruit, or packs other farms' fresh fruit in addition to their own, is to be assigned this classification (2104) for the packing operation. However, if the farmer only sorts and stores the fresh fruit the appropriate agricultural classification is applicable to both the growing and sorting/storage operations.

Exclusions:

- Fresh vegetable packing is classified in 2104-01;
- Cannery or freezing operations and/or any processing of the fruit is classified in 3902;
- Cold storage operations not exclusively part of a packing operation are classified in 4401 or 4404.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2201 Classification 2201.**2201-01 Laundry, dry cleaning and dyeing establishments**

~~((Applies to establishments engaged in laundry, dry cleaning, or dyeing services. This classification is limited to establishments providing services primarily to retail walk-in customers who leave the items to be laundered, dry cleaned, or dyed at the laundry facility. This classification covers all operations including, but not limited to, dry cleaning, dyeing, the washing, drying, and pressing of clothing or household furnishings such as, but not limited to, curtains, bedding, linens, and sleeping bags, repairing or altering the items left for cleaning, pick up and delivery services, and drop off stations. These establishments generally employ counter staff to wait on customers as well as employees who engage in laundering and/or dry cleaning operations (although some employees may perform both activities). This classification also includes waterproofing or mothproofing garments, or providing cold storage for fur goods for retail customers. Materials and machinery include, but are not limited to, detergents, bleaches, cleaning solvents, deodorizers, dyes, clothes hangers, plastic bags, automatic or steam operated washing machines, dryers, dry cleaning chambers, dyeing vats, pressing and ironing boards, sewing machines, and delivery vans.~~

~~This classification excludes self-service, coin-operated laundry or dry cleaning establishments which are to be reported separately in classification 2204; commercial or industrial laundries not covered by another classification, including linen, uniform and diaper services which are to be reported separately in classification 2203; and carpet, rug and upholstery cleaning establishments which are to be reported separately in classification 2202.~~

~~**Special note:** It is common for establishments subject to this classification to have satellite locations where customers drop off and pick up cleaning, but where no actual laundering occurs. Drop off centers are included in this classification.)~~

Applies to:

Businesses engaged in laundry, dry cleaning, or dyeing services.

This classification is limited to businesses providing services primarily to retail walk-in customers who leave the items to be laundered, dry cleaned, or dyed at the laundry facility.

Items cleaned/repaired/altered include, but are not limited to:

- Bedding;
- Clothing;
- Curtains;
- Linens;
- Sleeping bags.

Work activities include, but are not limited to:

- Checking customer orders in and out;
- Dry cleaning;
- Dyeing;
- Washing, drying, and pressing;
- Repairing or altering;
- Waterproofing or mothproofing garments;
- Pick up and delivery;
- Providing cold storage for fur goods for retail customers.

~~**Special note:** It is common for establishments subject to this classification to have satellite locations where customers drop off and pick up cleaning, but where no actual laundering occurs. Drop off centers are included in this classification.~~

Materials and machinery used include, but are not limited to:

- Automatic or steam operated washing machines;
- Bleaches;
- Cleaning solvents;
- Clothes hangers;
- Delivery vans;
- Deodorizers;
- Detergents;
- Dry cleaning chambers;
- Dryers;
- Dyeing vats;
- Dyes;
- Plastic bags;
- Pressing and ironing boards;
- Sewing machines.

Exclusions:

- Self-service, coin-operated laundry or dry cleaning establishments are classified in 2204;
- Commercial or industrial laundries not covered by another classification, including linen, uniform, and diaper services are classified in 2203;
- Carpet, rug, and upholstery cleaning businesses are classified in 2202.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2204 Classification 2204.

2204-00 Laundry or dry cleaning - Coin-operated, self-service operations

~~((Applies to establishments engaged in the operation of coin (or card) operated self-service laundry and dry cleaning equipment for customers' use on the premises. Most facilities have an attendant(s) on duty at all times; others may have only periodic surveillance by the owner or employees. Attendants generally ensure there are no problems with the equipment or with vandalism; they may perform minor repair or adjustments on the machines, assist patrons by carrying laundry or explaining the operation of the machines. There is usually a small waiting area which may include benches and chairs, change-making machines, vending machines with food and laundry supplies. Materials include, but are not limited to, detergents, bleaches, fabric softeners, dry cleaning solvents, spot removing fluids, plastic bags, and hangers. Machinery includes, but is not limited to, residential or commercial sized washers and dryers, dry cleaning machines, pressing machines, irons, coin changing machines, tables for folding clothing, chairs, hanger racks, water heating and storage system, solvent reclaiming units, and solvent storage tanks.~~

~~This classification excludes laundry and dry cleaning establishments providing services primarily to retail walk-in customers which are to be reported separately in classification 2201, and commercial or industrial laundries not covered by another classification, including linen, uniform and diaper service which are to be reported separately in classification 2203.~~

~~**Special note:** This classification includes self-service/coin-operated cleaning facilities that offer dry cleaning services where the customers leave their clothing with the attendant and it is sent elsewhere for professional dry cleaning. This classification does not apply to any self-service/coin-operated cleaning facilities where the attendant performs any washing, drying, dry cleaning, hanging, or folding services on the premises which are to be reported separately in classification 2201.)~~

Applies to:

Businesses engaged in the operation of self-service laundry and dry cleaning equipment for customer's use on the premises. Some facilities have an attendant(s) on duty at all times; others may have only periodic surveillance by the owner or employees.

There is usually a small waiting area which may include benches and chairs, change-making machines, vending machines with food and laundry supplies.

Work activities include, but are not limited to:

- Assist patrons by carrying laundry;
- Explaining the operations of the machines;
- Performing minor repair or adjustments on the machines.

Materials used include, but are not limited to:

- Bleaches;
- Detergents;
- Dry cleaning solvents;
- Fabric softeners;
- Hangers;

- Plastic bags;
- Spot removing fluids.

Machinery used include, but are not limited to:

- Coin changing machines;
- Dry cleaning machines;
- Irons;
- Pressing machines;
- Racks;
- Residential or commercial sized washers and dryers;
- Solvent reclaiming units;
- Solvent storage tanks;
- Tables for folding clothes;
- Water heating and storage systems.

Exclusions:

• Laundry and dry cleaning establishments providing services primarily to retail walk-in customers are classified in 2201.

Special note: Classification 2204 includes self-service/coin-operated cleaning facilities that offer dry cleaning services where the customers leave their clothing with the attendant and it is sent elsewhere for professional dry cleaning. Classification 2204 does not apply to any self-service/coin-operated cleaning facilities where the attendant performs any washing, drying, dry cleaning, hanging, or folding services on the premises which are classified in 2201.

• Commercial or industrial laundries not covered by another classification, including linen, uniform, and diaper service are classified in 2203.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2401 Classification 2401.

2401-00 Paper, pulp, or wood fiber: Manufacturing

~~((Applies to establishments engaged in making paper from raw materials such as, but not limited to, wood chips, cotton fiber, water, kraft paper, recycled paper, bleach and dye purchased from outside sources. This classification includes the mashing of wood chips into fiber. Paper manufacturers may make finished products from the paper they manufacture which is included in this classification when done by employees of employers subject to this classification. Equipment includes, but is not limited to, large vats and tanks, spraying systems, choppers, paper-making machines, conveyor systems, forklifts, scales, winders, rewinders, and cutting machinery. Modern automated paper mills are monitored from computerized control rooms; many of the employees are electricians and control technicians. Wood chips are heated, washed, drained, impregnated with chemicals to separate natural binder fibers from the cellulose fibers, then chopped into tiny particles and further cleansed. Bleach and water are added again and the fibrous mixture is held in tanks to relax and fluff it to a natural state before going to a filtering process where the water is removed, allowing it to coagulate. More ingredients are added to increase strength, then the mixture is sprayed onto the paper-making machinery where it winds through the various sections at high speed. During the~~

first stage the pulp is mostly water; as it spins on the wire mesh, the water is suctioned out and the paper winds around felt-covered rollers. The machine moves the paper through an enclosed, heated room (oven) and dried. The dried paper is rolled from the oven, smoothed on rollers, then rewound into smaller rolls and cut into desired lengths and widths.

This classification excludes establishments engaged in the manufacture of wood chips which are to be reported separately in classification 2903 and establishments engaged in the manufacture of abrasive cloth or paper (emery cloth/sandpaper) which are to be reported separately in classification 3708.

2401-03 Corrugated and fiber board container: Manufacturing

Applies to establishments engaged in the manufacture of boxes and cartons made of corrugated cardboard. Manufacturers subject to this classification may either corrugate cardboard for use in their own products or purchase corrugated cardboard from others. Applying coatings or laminating their own products is included in this classification when done by employees of employers subject to this classification. Raw materials include, but are not limited to, corrugated cardboard, glue, staples, tape, ink, and coating resins. Machinery includes, but is not limited to, sheeters, slitters, slotters, winders or rewinders, printing presses, box-making machinery, die cutters or other cutting machines, laminators, corrugators, balers and shredders, and forklifts. Cardboard is cut to size and shape, printed, scored or creased, corners cut or slotted, sides folded and bottom pieces taped together. Box manufacturers may cut Styrofoam into packing pieces if their customers want them as a packaging unit. This incidental activity is included within the scope of this classification when done by employees of an employer subject to this classification.

This classification excludes establishments engaged in corrugating, laminating, oiling or coating paper which are to be reported separately in classification 2401-04 and establishments engaged in the manufacture of abrasive cloth or paper (emery cloth/sandpaper) which are to be reported separately in classification 3708.

2401-04 Paper coating, corrugating, laminating, oiling, or embossing

Applies to establishments engaged in manufacturing corrugated cardboard, or in coating, laminating, oiling, embossing paper or cardboard (chipboard) for others. To make corrugated cardboard, three (or more) rolls of kraft paper are simultaneously fed into a corrugating machine. Steam is sprayed onto the middle sheet as it winds around grooved rollers, forming grooves. Glue is applied to the tips of the grooves and the middle sheet is run between the other two sheets to form corrugated cardboard. The rest of the process involves heating, drying and curing, scoring and cutting the cardboard. Coating involves mixing coating materials, pouring the mixture into troughs of coating machines; the paper passes over rollers through the coating mixtures. Oiling or waxing processes are similar, but the oils or waxes are heated prior to being applied to the paper. After saturation, paper is dried, then finished by calendering (smoothed by being pressed through large rollers), slitting to desired widths, and rewinding or sheeting to size. Laminated paper is produced by feeding a paste or glue between layers of paper, pressing them together, drying and finishing by winding into rolls, or cutting, slitting or die cutting to size and shape. Paper is embossed by winding it on embossing rollers that perforate designs in it. Raw materials include, but are not limited to, kraft paper, chipboard, glues, waxes, resins and other coating liq-

uids. Machinery for all these processes moves paper through glue baths, finishing applications, squeeze rollers, corrugating or embossing rollers, drying ovens, cutting devices, laminators, and/or stacking equipment. Other machinery includes, but is not limited to, forklifts, balers and shredders.

This classification excludes establishments engaged in the manufacture of paper, pulp or wood fiber which are to be reported separately in classification 2401-00; establishments engaged in the manufacture of corrugated and fiber board containers which are to be reported separately in classification 2401-03; and establishments engaged in the manufacture of abrasive cloth or paper (emery cloth/sandpaper) which are to be reported separately in classification 3708.

Special note: This classification differs from classification 2401-03 in that making corrugated cardboard or laminating, oiling, or coating cardboard products made by others is the main activity in classification 2401-04 while such supporting operations in classification 2401-03 are incidental to the manufacture of the product.

2401-08 Paper goods, N.O.C.: Manufacturing

Applies to establishments engaged in the manufacture of heavy-grade, paper-based products, which are not covered by another classification (N.O.C.). Products range widely and include, but are not limited to, panels, paper-mache items, milk cartons, display boards, commercial air filters, and spiral tubes. Spiral tubes range in size from small cores for paper towels to large tubes used by the construction industry to form concrete. Materials include, but are not limited to, paper, chipboard, glue, inks and dyes, chemicals; materials such as lightweight wire, or small parts made of plastic, Styrofoam, or textiles could be used as auxiliary pieces of the finished product. Machinery includes, but is not limited to, sheeters, slitters, slotters, winders, rewinders, printing presses, cutting, drilling or punching machines, ovens, heated presses, vats and beaters, grinders, laminators, embossers, gluers, vacuum machines, heat-sealing machines, wire-bending equipment, packaging equipment, conveyors, shredders, and balers. Depending on the product being made, processes are similar to one or more of those described in the other paper products manufacturing classifications.

This classification excludes establishments engaged in the manufacture of paper, pulp or wood fiber which are to be reported separately in classification 2401-00.))

Applies to:

Businesses making paper from raw materials.

Paper manufacturers may make finished products from the paper they manufacture which is included in this classification when done by employees of employers subject to this classification.

Raw materials used include, but are not limited to:

- Bleach and dye;
- Cotton fiber;
- Kraft paper;
- Recycled paper;
- Water;
- Wood chips.

Equipment includes, but is not limited to:

- Choppers;
- Conveyor systems;
- Cutting machinery;

- Forklifts;
- Papermaking machines;
- Scales;
- Spraying systems;
- Vats and tanks;
- Winders and rewinders.

Work activities and processes include, but are not limited to:

- Monitoring automated paper mills from computerized control rooms. Many of the employees are electricians and control technicians;
- Mashing wood chips into fiber;
- Heating, washing, draining and impregnating wood chips with chemicals to separate natural binder fibers from the cellulose fibers, then chopping into tiny particles and further cleaning;
- Adding bleach and water and holding the fibrous mixture in tanks to relax and fluff to a natural state;
- Filtering to remove the water and allow the fibrous mixture to coagulate;
- Adding ingredients to increase strength;
- Spraying the mixture onto the papermaking machinery where it winds through the various sections at high speed;
- During the first stage of papermaking the pulp is mostly water;
- Spinning on wire mesh, the water is suctioned out;
- Winding the paper around felt-covered rollers, where the machine moves the paper through an enclosed, heated room (oven), drying the paper;
- Rolling the dried paper from the oven, smoothing on rollers, rewinding into smaller rolls and cutting into desired lengths and widths.

Exclusions:

- Manufacturing wood chips is classified in 2903;
- Manufacturing abrasive cloth or paper (emery cloth/sandpaper) is classified in 3708.

2401-03 Corrugated and fiberboard container: Manufacturing

Applies to:

Businesses manufacturing boxes and cartons made of corrugated cardboard.

Materials used include, but are not limited to:

- Coating resins;
- Corrugated cardboard;
- Glue;
- Ink;
- Staples;
- Tape.

Machinery used includes, but is not limited to:

- Balers;
- Box-making machinery;
- Corrugators;
- Die cutters or other cutting machines;
- Forklifts;
- Laminators;
- Printing presses;
- Sheeters;
- Shredders;
- Slitters;

- Slotters;
- Winders or rewinders.

Work activities and processes include, but are not limited to:

- Currogating cardboard for use in the manufacturer's own products or purchasing corrugated cardboard from others;
- Applying coatings or laminating the manufacturer's own products when done by employees of employers subject to this classification;
- Cutting materials to size and shape;
- Printing on materials;
- Scoring or creasing materials;
- Cutting or slotting box corners;
- Folding sides of boxes;
- Taping bottom pieces of boxes together;
- Cutting polystyrene foam (Styrofoam) into packing pieces if their customers want them as a packaging unit. This incidental activity is included within the scope of this classification when done by employees of an employer subject to this classification.

Exclusions:

- Businesses engaged mainly in corrugating, laminating, oiling or coating paper are classified in 2401-04;
- Manufacturing abrasive cloth or paper (emery cloth/sandpaper) is classified in 3708.

2401-04 Paper coating, corrugating, laminating, oiling, or embossing

Applies to:

- Businesses manufacturing corrugated cardboard or paper.
- Businesses coating, laminating, oiling, or embossing paper, chipboard, or cardboard for others.

Work activities and processes include, but are not limited to:

- Corrugated cardboard making - Feeding three (or more) rolls of kraft paper simultaneously into a corrugating machine. Spraying steam onto the middle sheet as it winds around grooved rollers, forming grooves. Applying glue to the tips of the grooves and running the middle sheet between the other two sheets to form corrugated cardboard. The rest of the process involves heating, drying, curing, scoring and cutting the cardboard.
- Coating cardboard or paper - Mixing coating materials, pouring the mixture into troughs of coating machines. The paper then passes over rollers through the coating mixtures.
- Oiling or waxing cardboard or paper - These processes are similar to coating, but the oils or waxes are heated prior to being applied to the paper. After saturation, the paper is dried, then finished by calendaring (smoothed by being pressed through large rollers), slitting to desired widths, and rewinding or sheeting to size.
- Laminating paper - Feeding a paste or glue between layers of paper, pressing them together, drying and finishing by winding into rolls, or cutting, slitting or die cutting to size and shape.
- Embossing paper - Winding paper on embossing rollers that perforate designs in it. Raw materials include, but are not limited to, kraft paper, chipboard, glues, waxes, resins and other coating liquids.

Machinery used includes, but is not limited to:

- Machinery that moves paper through glue baths, finishing applications, squeeze rollers, corrugating or embossing rollers, drying ovens, cutting devices, laminators, and/or stacking equipment;

- Forklifts;
- Balers;
- Shredders.

Exclusions:

- Manufacturing paper, pulp or wood fiber is classified in 2401-00;
- Manufacturing corrugated and fiber board containers is classified in 2401-03;
- Manufacturing abrasive cloth or paper (emery cloth/sandpaper) is classified in 3708.

Special note: This classification differs from classification 2401-03 in that making corrugated cardboard or laminating, oiling, or coating cardboard products made by others is the main activity in classification 2401-04 while such supporting operations in classification 2401-03 are incidental to the manufacture of the product.

2401-08 Paper goods, N.O.C.: Manufacturing

Applies to:

Manufacturing of heavy-grade, paper-based products, which are not covered by another classification (N.O.C.).

Products manufactured range widely and include, but are not limited to:

- Commercial air filters;
- Display boards;
- Milk cartons;
- Panels;
- Paper-mache items;
- Spiral tubes - Spiral tubes range in size from small cores for paper towels to large tubes used by the construction industry to form concrete.

Materials used include, but are not limited to:

- Chemicals;
- Chipboard;
- Glue;
- Inks and dyes;
- Paper;
- Materials such as lightweight wire, or small parts made of plastic, polystyrene foam (Styrofoam), or textiles could be used as auxiliary pieces of the finished product.

Machinery includes, but is not limited to:

- Balers;
- Conveyors;
- Cutting, drilling, or punching machines;
- Embossers;
- Gluers;
- Grinders;
- Heated presses;
- Heat-sealing machines;
- Laminators;
- Ovens;
- Packaging equipment;
- Printing presses;
- Sheeters;
- Shredders;

- Slitters;
- Slotters;
- Vacuum machines;
- Vats and beaters;
- Winders and rewinders;
- Wire-bending equipment.

Work activities and processes include:

Depending on the product being made, processes are similar to one or more of those described in the other paper products manufacturing classifications.

Exclusions:

• Manufacturing paper, pulp, or wood fiber is classified in 2401-00.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2904 Classification 2904.

2904-00 Veneer: Commercial production

~~((Applies to establishments engaged in all types of commercial production of rough veneer. Veneer is a thin layer of material, usually made of wood or plastic, which is used to cover the surface of another material. In most instances, finished veneer will have a superior appearance or quality than the surface it covers. Rough veneer made of wood generally involves sawing logs, bolts (lengthwise strips), or blocks, softening them in vats of hot water or steam rooms to remove the bark and make the fiber pliable for cutting or turning. The pieces are further shaped by turning, slicing or sawing, cutting the single-ply veneer sheets to various sizes of length and thickness, then drying them in kilns. Rough veneer manufactured in this classification is generally sold to manufacturers of veneer products made by laminating rough veneer to plywood or particleboard. Machinery includes, but is not limited to, band saws, table saws, stationary knife machines, rotary lathes, conveyor systems, kilns, forklifts.~~

~~This classification excludes sawmill operations which are to be reported separately in classification 1002; the manufacture of plywood which is to be reported separately in classification 2904-01; the manufacture of veneer products which is to be reported separately in classification 2903; and the manufacture of other products made from wood or plastic which are to be reported separately in the classification applicable to the work being performed. The production of veneer by employees of employers engaged in the manufacture of other products is to be included in the classification covering the manufacture of those products.~~

2904-01 Plywood: Manufacturing

~~Applies to establishments engaged in the manufacture of plywood. Plywood is a structural material made of layers of wood (veneer) glued tightly together, usually with the grains of adjoining layers at right angles to each other. (In this application the word "ply" means one of the sheets of veneer.) The production of veneer is included in the scope of this classification when done by employees of employers engaged in the manufacture of plywood. To form plywood, it may be necessary to join less-than-full-size sheets of veneer into full-size~~

sheets. In the joining process, veneer jointers, taping machines, tapeless splicers, or other methods of joining veneer, such as stringing and stitching are used. Next, a glue spreader coats the cross banding and core veneers (front and back) with liquid glue. Once glued, the veneer is conveyed to a hot press that bonds the veneers into plywood. The panels are removed from the presses, placed in a storage pile (referred to as a "hot stack") to cool and cure, then trimmed, sanded, and stacked for conditioning. Plywood may be impregnated with chemicals to develop wood-plastic combinations that are harder and denser than ordinary plywood. After they are inspected and graded according to thickness and quality, plywood panels are moved by forklift to the warehouse portion of the plant where they are stacked in tiers which are separated by a piece of lumber to prevent sagging or distortion. Pieces are bundled with metal straps, either manually or with automatic strapping equipment.

This classification excludes sawmill operations which are to be reported separately in classification 1002; establishments that manufacture rough veneer as a product which are to be reported separately in classification 2904-00; and the manufacture of other products made from wood or plastic which are to be reported separately in the classification applicable to the work being performed.)

Applies to:

Businesses manufacturing rough veneer.

Veneer is a thin layer of material, usually made of wood or plastic, which is used to cover the surface of another material. In most instances, finished veneer will have a superior appearance or quality than the surface it covers. Rough veneer manufactured in this classification is generally sold to manufacturers of veneer products made by laminating rough veneer to plywood or particleboard.

Producing rough veneer made of wood includes, but is not limited to:

- Sawing logs, bolts (lengthwise strips), or blocks;
- Softening logs, bolts, or blocks in vats of hot water or steam rooms to remove the bark and make the fiber pliable for cutting or turning;
- Shaping the pieces further by turning, slicing, or sawing;
- Cutting the single-ply veneer sheets to various sizes of length and thickness;
- Drying the veneer sheets in kilns.

Machinery used includes, but is not limited to:

- Band saws;
- Conveyor systems;
- Forklifts;
- Kilns;
- Rotary lathes;
- Stationary knife machines;
- Table saws.

Exclusions:

- The production of veneer by employees of employers engaged in the manufacture of other products is included in the classification covering the manufacture of those products;
- Sawmill operations are classified in 1002;
- Manufacturing plywood is classified in 2904-01;
- Manufacturing veneer products is classified in 2903;

• Manufacturing other products made from wood or plastic, which are classified in the classification applicable to the work being performed.

2904-01 Plywood: Manufacturing

Applies to:

Businesses manufacturing plywood.

Plywood is a structural material made of layers of wood (veneer) glued tightly together, usually with the grains of adjoining layers at right angles to each other. (In this application the word "ply" means one of the sheets of veneer.) The production of veneer is included in the scope of this classification when done by employees of employers engaged in the manufacture of plywood.

Producing plywood may include, but is not limited to:

- Joining less-than-full-size sheets of veneer into full-size sheets using veneer jointers, taping machines, tapeless splicers, or other methods such as stringing and stitching;
- Coating the cross banding and core veneers (front and back) with liquid glue using a glue spreader;
- Conveying the veneer to a hot press that bonds the veneers into plywood;
- Removing the panels from the presses;
- Placing the panels in a storage pile (referred to as a "hot stack") to cool and cure;
- Trimming, sanding, and stacking panels for conditioning;
- Plywood may be impregnated with chemicals to develop wood-plastic combinations that are harder and denser than ordinary plywood;
- Inspection and grading panels according to thickness and quality;
- Moving by forklift to the warehouse portion of the plant where they are stacked in tiers separated by a piece of lumber to prevent sagging or distortion;
- Bundling with metal straps, either manually or with automatic strapping equipment.

Exclusions:

- Sawmill operations are classified in 1002;
- Manufacturing rough veneer as a product is classified in 2904-00;
- Manufacturing other products made from wood or plastic, which are classified in the classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2905 Classification 2905.

2905-00 Wood furniture and casket: Manufacturing, assembling, or repairing; Furniture refinishing

~~((Applies to establishments primarily engaged in manufacturing, assembling or repairing furniture or caskets made of wood. Products may be custom-made or stock, for residential or commercial use. This classification includes establishments that repair and refinish wood furniture that is new, used, antique, or furniture with factory de-~~

fects or damages from shipping. Furniture includes, but is not limited to, sofas, love seats, chairs, tables, beds, dressers, chests, stools, hutches, pool tables, credenzas, desks, bookcases, pews, altars, pulpits, baptisteries, and benches. Materials include, but are not limited to, dimensional lumber, furniture stock, plywood, veneer, particleboard, plastic laminates, polyfoam, upholstery materials (fabric, stuffing, cardboard, metal springs), hardware, glue, paint, stain, oils or lacquer. Machinery includes, but is not limited to, various types of saws (table, panel, rip, cut-off, radial arm, trim, circular, band, jig and miter), molders, shapers, routers, jointers, mortises, tenons, lathes, planers, various types of sanders, drill presses, hand drills, boring machines, pneumatic nail, screw and staple guns, spray guns, air compressors, glue spreaders, dust collectors, drying ovens, sewing machines, steam irons, fork lifts, and pallet jacks. Operations range from processing rough or surfaced lumber, plywood or fiberboard, to the assembly of frame parts into finished products. For classification purposes, repair includes fabricating replacement parts, reinforcing structural weak points, disassembling, regluing and reassembling, recaning chairs, and similar activities, and refinishing includes stripping, sanding, filling, priming, and finishing with stain, oil, paint, or lacquer. Manufacturers in this classification may upholster their furniture, sell it unfinished, or finish it with various lacquers by spraying, dipping, or applying by hand. To make caskets, wood is cut to size, planed, and sanded. Sections are joined to form the shell, finished with lacquer, oil, or stain, and hardware added. Interior upholstery is usually stapled in place; exterior upholstery is usually glued on. This classification also contemplates the assembly of caskets from purchased components. Manufacturers of wood caskets often purchase ready-made fiberglass or metal casket shells, re-finish them if necessary, mount the hardware, and upholster them. This is considered incidental to the main operation and is included in this classification. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification. Physically separated upholstery departments of establishments engaged in furniture or casket manufacturing, assembly, or finishing may be reported separately in classification 3808 provided that the conditions of the general reporting rules covering the division of employee hours have been met.

This classification excludes all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; establishments engaged in stripping and refinishing furniture, but do not otherwise repair it, which are to be reported separately in classification 3603; establishments engaged in the manufacture of wood cabinets, countertops or fixtures which are to be reported separately in classification 2907; and establishments engaged in the manufacture of furniture or caskets from metal or plastic which are to be reported separately in the classification applicable to the work being performed.

Special note: Establishments primarily engaged in the manufacture of furniture or caskets may make other wood products such as cabinets, countertops and fixtures as an incidental activity. The incidental manufacture of these products can be included within the scope of this classification. Furniture is generally moveable and unsecured. Fixtures are usually secured, stationary, or permanently built-in objects. Even though some fixtures may not be secured to a wall or

floor, they are not intended to be relocated, unlike furniture which is frequently and more easily arranged.)

Applies to:

• Businesses primarily engaged in manufacturing, assembling, repairing or refinishing furniture made of wood.

• Businesses engaged in manufacturing or assembling caskets made of wood.

Products may be custom-made or stock, for residential or commercial use.

Manufacturers in this classification may upholster their furniture, sell it unfinished, or finish it with various lacquers by spraying, dipping, or applying by hand.

Furniture includes, but is not limited to:

- Altars;
- Baptisteries;
- Beds;
- Benches;
- Bookcases;
- Chairs;
- Chests;
- Credenzas;
- Desks;
- Dressers;
- Hutches;
- Love seats;
- Pews;
- Pool tables;
- Pulpits;
- Sofas;
- Stools;
- Tables.

Furniture repaired or refinished in this classification may be:

- New;
- Used;
- Antique;
- Furniture with factory defects or damages from shipping.

Repair in this classification includes:

- Disassembling;
- Fabricating replacement parts;
- Recaning chairs and similar activities;
- Regluing and reassembling;
- Reinforcing structural weak points.

Refinishing in this classification includes:

- Stripping;
- Sanding;
- Filling;
- Priming;
- Finishing with stain, oil, paint, or lacquer.

Materials used include, but are not limited to:

- Dimensional lumber;
- Furniture stock;
- Glue;
- Hardware;
- Lacquer;

- Oils;
- Paint;
- Particleboard;
- Plastic laminates;
- Plywood;
- Polyfoam;
- Stain;
- Upholstery materials (fabric, stuffing, cardboard, metal springs);
- Veneer.

Machinery used include, but are not limited to:

- Air compressors;
- Boring machines;
- Drill presses;
- Drying ovens;
- Dust collectors;
- Forklifts;
- Glue spreaders;
- Hand drills;
- Jointers;
- Lathes;
- Molders;
- Mortises;
- Pallet jacks;
- Planers;
- Pneumatic nail, screw and staple guns;
- Routers;
- Sanders;
- Saws (table, panel, rip, cut-off, radial arm, trim, circular, band, jig and miter);
- Sewing machines;
- Shapers;
- Spray guns;
- Steam irons;
- Tenons.

Casket manufacturing process includes, but is not limited to:

- Cutting wood to size;
- Planing and sanding wood;
- Joining sections to form the shell;
- Finishing with lacquer, oil, or stain;
- Adding hardware;
- Stapling interior upholstery in place;
- Gluing exterior upholstery on;
- Assembling caskets from purchased components;
- Manufacturers of wood caskets often purchase ready-made fiber-glass or metal casket shells, refinish them, mount the hardware, and upholster them. This is incidental to the main operation and is included in this classification.

This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

Physically separated upholstery departments of businesses engaged in furniture or casket manufacturing, assembly, or finishing may be reported separately in classification 3808 when the conditions of the general reporting rules covering the division of employee hours have been met.

Exclusions:

- All activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed;
- Businesses engaged in stripping and refinishing furniture, but do not otherwise repair it, are classified in 3603;
- Businesses engaged in the manufacture of wood cabinets, countertops, or fixtures are classified in 2907;
- Businesses engaged in the manufacture of furniture or caskets from metal or plastic, which are classified in the classifications applicable to the work being performed.

Special note: Businesses primarily engaged in the manufacture of furniture or caskets may make other wood products such as cabinets, countertops, and fixtures as an incidental activity. The incidental manufacture of these products can be included within the scope of this classification. Furniture is generally moveable and unsecured. Fixtures are usually secured, stationary, or permanently built-in objects. Even though some fixtures may not be secured to a wall or floor, they are not intended to be relocated, unlike furniture, which is frequently and more easily arranged.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-2906 Classification 2906.**2906-01 Pattern or model - Metal, plastic or wood: Manufacturing**

~~((Applies to establishments engaged in making metal, plastic, or wood patterns or models. Patterns or models produced may include industrial, aircraft, foundry, architectural scale and mechanical models. Use of this classification is limited to the fabrication of individual or prototype pieces. Work contemplated is limited to fabricating the pattern or model using woodworking and metal cutting tools, sanding and filling voids with fillers (wood or plastic); and extensive hand finishing of all these mediums when performed by employees of an employer subject to this classification.~~

~~This classification excludes pattern or model making by other manufacturers unless specifically allowed for in the manufacturing classification, and establishments engaged in the manufacture of plastic or wood model kits (assembly of a scale model of a car, boat, or plane) which is to be reported separately in the applicable classification.~~

2906-14 Wood piano or musical instrument: Manufacturing

~~Applies to establishments engaged in the manufacture of wood musical instruments including, but not limited to, pianos, organs, violins, harps, and guitars. Work contemplated by this classification includes various phases of woodworking techniques required to manufacture cases, sounding boards, pedals and action boards, metal working techniques required to produce components such as pipes, frames, switches, magnets, wind reservoirs and blower systems, and incidental tanning of skins for drums and banjos when done by employees of an employer having operations subject to this classification. This classification applies whether the company is producing all component parts or assembling a wooden musical instrument from purchased parts. This~~

~~classification includes the reconditioning and subsequent sale of re-conditioned pianos, organs, and wooden musical instruments.~~

~~This classification excludes the manufacture of metal musical instruments which is to be reported separately in classification 3404; tuning or repair of pianos which is to be reported separately in classification 4107; and the sale of new piano and organs or wooden musical instruments which is to be reported separately in the applicable store classification.)~~

Applies to:

Businesses engaged in making metal, plastic, or wood patterns or models.

Use of this classification is limited to the fabrication of individual or prototype pieces.

Products produced may include:

- Aircraft models or patterns;
- Architectural scale models or patterns;
- Foundry models or patterns;
- Industrial models or patterns;
- Mechanical models or patterns.

Work activities in this classification are limited to:

- Fabricating the pattern or model using woodworking and metal cutting tools;
- Sanding and filling voids with fillers (wood or plastic);
- Extensive hand finishing of all these mediums when performed by employees of an employer subject to this classification.

Exclusions:

- Pattern or model making by other manufacturers, unless specifically allowed for in the manufacturing classification, are classified in the manufacturing classification;
- Manufacturing plastic or wood model kits (assembly of a scale model of a car, boat, or plane) is classified in the applicable manufacturing classification.

2906-14 Wood piano or musical instrument: Manufacturing

Applies to:

Businesses engaged in manufacturing wood musical instruments.

This classification applies whether the company is producing all component parts or assembling a wooden musical instrument from purchased parts.

Wooden musical instruments manufactured in this classification include, but are not limited to:

- Guitars;
- Harps;
- Organs;
- Pianos;
- Violins.

Work activities include, but are not limited to:

- Woodworking techniques required to manufacture cases, sounding boards, pedals and action boards;
- Metal working techniques required to produce components such as pipes, frames, switches, magnets, wind reservoirs and blower systems;
- Reconditioning and subsequent sale of reconditioned pianos, organs, and wooden musical instruments;

• Incidental tanning of skins for drums and banjos when done by employees of an employer having operations subject to this classification.

Exclusions:

• Manufacturing metal musical instruments is classified in 3404;
• Tuning or repairing pianos is classified in 4107;
• Sale of new piano and organs or wooden musical instruments is classified in the applicable store classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2909 Classification 2909.

2909-00 Woodenware - Household and sporting goods N.O.C.: Manufacturing or assembly

~~((Applies to establishments engaged in light woodworking, not covered by another classification (N.O.C.), for the manufacture of woodenware household goods, sporting goods and a wide range of decorative woodenware items that require a minimal amount of cutting, shaping, drilling, sanding, assembling and finishing. Items produced in this classification include, but are not limited to, towel bars, tissue holders, magazine racks, spice racks, knife holders, recipe boxes, cutting boards, rolling pins, salad forks, bowls, picture and mirror frames, candle holders, speaker shells, bases for turntables, trophy and plaque bases, house numbers, window blinds and shades, drapery woodenware (rods, brackets, supports, rings), broom and brush handles, bobbins and spools, crutches, hat blocks, pegs, coat hangers, toothpicks, gift boxes, tobacco pipes, toys, games, basketball backboards, baseball bats, boomerangs, pool or shuffleboard cues, hockey sticks, oars, paddles, archery bows and arrow shafts. Establishments in this classification generally purchase ready-made components which they assemble with pneumatic or hand tools such as, but not limited to, nail or glue guns, spray or paint guns, staple guns, screw guns, drills, shaping tools, and brushes. Products may be left natural, or finished by applying paint, stain, lacquer or varnish, or hand dipping or rubbing. A limited assortment of basic wood shop machinery such as, but not limited to, table saws, circular saws, band saws, miter saws, jig saws, routers, shapers, belt sanders, edge sanders, drill presses, boring machines, and finger jointer may be used for the occasionally cutting of a piece of wood. Other materials include, but are not limited to, molding stock, dowels, plywood, glue, staples, screws, and small nails. In most cases, products are small and the manufacturers do not provide installation. This is a shop or plant only classification. It does, however, include work being performed in an adjacent yard when operated by an employer having operations subject to this classification.~~

~~This classification excludes all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; and the manufacture or assembly of wood products such as, but not limited to, molding stock, outdoor playground equipment, marine floats and docks, gazebos, solariums, saunas, ladders, or cable spools from dimension lumber which is to be reported separately in the applicable classifications.)~~

Applies to:

Businesses engaged in light woodworking, not covered by another classification (N.O.C.), for the manufacture of woodenware household goods, sporting goods, and decorative woodenware items that require a minimal amount of cutting, shaping, drilling, sanding, assembling, and finishing.

Wooden items produced in this classification include, but are not limited to:

- Archery bows and arrow shafts;
- Baseball bats;
- Bases for turntables;
- Basketball backboards;
- Bobbins and spools;
- Boomerangs;
- Bowls;
- Broom and brush handles;
- Candle holders;
- Coat hangers;
- Crutches;
- Cutting boards;
- Drapery woodenware (rods, brackets, supports, rings);
- Frames (picture and mirror);
- Games;
- Gift boxes;
- Hat blocks;
- Hockey sticks;
- House numbers;
- Knife holders;
- Magazine racks;
- Oars;
- Paddles;
- Pegs;
- Pool or shuffleboard cues;
- Recipe boxes;
- Rolling pins;
- Salad forks;
- Speaker shells;
- Spice racks;
- Tissue holders;
- Tobacco pipes;
- Toothpicks;
- Towel bars;
- Toys;
- Trophy and plaque bases;
- Window blinds and shades.

Materials used include, but are not limited to:

- Dowels;
- Glue;
- Molding stock;
- Plywood;
- Ready-made components;
- Screws;
- Small nails;
- Staples.

Wood shop machinery and pneumatic or hand tools used include, but are not limited to:

- Band saws;
- Belt sanders;
- Boring machines;
- Brushes;
- Circular saws;
- Drill presses;
- Drills;
- Edge sanders;
- Finger jointer;
- Glue guns;
- Jig saws;
- Miter saws;
- Nail guns;
- Routers;
- Screw guns;
- Shapers;
- Shaping tools;
- Spray or paint guns;
- Staple guns;
- Table saws.

Work activities or processes include, but are not limited to:

- Assembling ready-made components;
- Finishing products by applying paint, stain, lacquer or varnish, or hand dipping or rubbing;
- Work being performed in an adjacent yard when operated by an employer having operations subject to this classification. This is a shop or plant only classification.

In most cases, products are small and the manufacturers do not provide installation.

Exclusions:

- All activities away from the shop or plant are reported separately in the classification applicable to the work being performed;
- Manufacturing or assembly of wood products such as, but not limited to, molding stock, outdoor playground equipment, marine floats and docks, gazebos, solariums, saunas, ladders, or cable spools from dimension lumber are classified in the applicable classifications.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

WAC 296-17A-3102 Classification 3102.**3102-04 Stone wool insulation: Manufacturing**

~~((Applies to establishments engaged in the manufacture of mineral wool insulation from siliceous materials such as, but not limited to, rock, slag, and glass, or combinations thereof. In a special furnace, hot air or steam is blown through molten rock or slag, shredding the material into a mass of fine intertwined fibers to form the wool. To produce fiberglass insulation material, molten glass is drawn at high speeds through orifices, then subjected to jets of high pressure steam which break the glass filaments into fine fibers. The final product, regardless of raw material, may be shipped in granules which are bag-~~

ged, or formed into flat sheets, cut to size, enclosed in paper or foil, and packaged. Incidental rock, slag, and glass crushing operations are contemplated by this classification.

This classification excludes the digging or quarrying of raw materials which is to be reported separately in the classification appropriate to the work being performed, and the manufacture of asbestos products which is to be reported separately in classification 3104.)

Applies to:

Businesses manufacturing mineral wool insulation from siliceous materials.

Materials used include, but are not limited to:

- Glass;
- Rock;
- Slag;
- Other siliceous materials.

Work activities include, but are not limited to:

- Blowing hot air or steam through molten rock or slag in a special furnace.
- Drawing molten glass at high speeds through orifices, then subjecting it to jets of high pressure steam which break the glass filaments into fine fibers to produce fiberglass insulation material.
- Shredding the material into a mass of fine intertwined fibers to form the wool.
- Forming and shipping the final product, such as granules which are bagged, or flat sheets which are cut to size, enclosed in paper or foil, and packaged.
- Incidental rock, slag, and glass crushing.

Exclusions:

- Digging or quarrying of raw materials is classified in the classification appropriate to the work being performed.
- Manufacturing asbestos products is classified in 3104.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3103 Classification 3103.

3103-01 Cement or lime: Manufacturing

((Applies to establishments engaged in the manufacture of cement or lime. Cement is a mixture of various granulated raw materials which may include limestone, shale, clay, slate, alumina, silica sand, iron ore and gypsum. The manufacturing process involves crushing and grinding the raw materials into a powder state. Materials are then blended with water to create a slurry, then kiln burned at high temperatures which chemically changes the mixture. This mixture is then combined with gypsum and ground into the final product. Cement may be sold as is or mixed with water and coarse aggregate to make concrete. Lime production involves a similar process using crushing and blending machinery and large kilns. Cement and lime manufacturers may own a limestone quarry as it is the major component of both products.

This classification excludes the quarrying of raw material which is to be reported separately in classification 1704; ready mix concrete dealers who are to be reported separately in classification

~~3101; and the manufacturing of concrete products which is to be reported separately in classification 3105.~~

~~3103-02 Lightweight aggregate building or insulation material: Manufacturing~~

~~Applies to establishments engaged in the manufacture of lightweight aggregate building material or insulation material. Types of products covered by this classification include, but are not be limited to, vermiculite, perlite, pozzolan, magnesite, expanded shale aggregate and fiberglass. The manufacturing process contemplates crushing of raw materials and blending and heating of materials in large furnaces.~~

~~This classification excludes the quarrying of raw material which is to be reported separately in classification 1704, and the manufacture of fiberglass products which is to be reported separately in the appropriate manufacturing classification.)~~

Applies to:

Businesses engaged in the manufacture of cement or lime.

Cement is a mixture of various granulated raw materials. Cement may be sold dry or mixed with water and coarse aggregate to make concrete.

Raw materials may include:

- Alumina;
- Clay;
- Gypsum;
- Iron ore;
- Limestone;
- Shale;
- Silica sand;
- Slate.

The cement manufacturing process includes:

- Crushing and grinding the raw materials into a powder state;
- Blending materials with water to create a slurry;
- Kiln burning at high temperatures which chemically changes the mixture;
- Combining the mixture with gypsum;
- Grinding into the final product.

Lime production involves a process similar to cement manufacturing, using crushing and blending machinery and large kilns.

Cement and lime manufacturers may own a limestone quarry as it is the major component of both products.

Exclusions:

- Worker hours engaged in quarrying of raw material are reported separately in classification 1704;
- Ready mix concrete dealers are classified in 3101;
- Manufacturing of concrete products is classified in 3105.

3103-02 Lightweight aggregate building or insulation material: Manufacturing

Applies to:

Businesses engaged in the manufacture of lightweight aggregate building material or insulation material.

Types of products covered by this classification include, but are not limited to:

- Expanded shale aggregate;

- Fiberglass;
- Magnesite;
- Perlite;
- Pozzolan;
- Vermiculite.

The manufacturing process includes crushing of raw materials and blending and heating of materials in large furnaces.

Exclusions:

- Worker hours engaged in quarrying of raw material are reported separately in classification 1704;
- Manufacturing fiberglass products is classified in the appropriate manufacturing classification.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-3105 Classification 3105.

3105-06 Concrete blocks, bricks, poles, piles, tiles and beams manufacturing

~~((Applies to establishments engaged in the manufacture of concrete blocks, bricks, poles, tiles, and beams. Sand, gravel, cement, cinders, aggregates, mesh wire, rods, and, in some cases, plastics are received from others. Raw materials are mixed with water and fed into molds or forming machines. Heavy mesh wire or rods may be inserted into the molds for strength. The formed products are usually steam dried and placed in the yard for curing prior to shipping. This classification does not apply to the manufacture of these products when done by construction contractors for use in the construction project.~~

~~This classification excludes the production of raw materials which is to be reported separately in the applicable mining, quarrying, or excavation classification; the installation or erection of products manufactured under this classification which is to be reported separately in the classification applicable to the work being performed; the manufacture of concrete sewer and irrigation pipes, septic tanks and concrete products not classified elsewhere which is to be reported separately in classification 3105-07; the manufacture of statuary and ornamental items from plaster or concrete which is to be reported separately in classification 3509; and the manufacture of brick or clay products which is to be reported separately in classification 3501.~~

~~**Special note:** This classification differs from classification 3509 "statuary or ornament manufacturing" in that products manufactured in classification 3105 are rough, do not require perfect finishes, and are generally for construction use; products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105.~~

3105-07 Concrete sewer and irrigation pipes, concrete septic tanks and concrete products, N.O.C. manufacturing

~~Applies to establishments engaged in the manufacture of concrete sewer and irrigation pipes, septic tanks and other concrete products not covered by another classification (N.O.C.), such as, but not limited to, panels, tubs, catch basin covers, chimney caps, columns, in-~~

generators, manhole covers, pier footings, monuments, coffins, caskets, and burial vaults. Sand, gravel, cement, cinders, aggregates, mesh wire, rods, and, in some cases, plastics are received from others. Raw materials are mixed with water and fed into molds or forming machines. Heavy mesh wire or rods may be inserted into the molds for strength. The formed products are usually steam dried and placed in the yard for curing prior to shipping. The manufacture of concrete panels generally involves the cutting and welding of metal to form a frame to which concrete fiberboard is attached. Additional steps may involve the application of an adhesive to the frame and the attachment of decorative material such as crushed rock, gravel, ceramic tile or brick. The fabrication of the metal framing is included within the scope of this classification when performed by employees of an employer engaged in manufacturing concrete panels. This classification does not apply to the manufacture of these products when done by construction contractors for use in the construction project.

This classification excludes the production of raw materials which is to be reported separately in the applicable mining, quarrying, or excavation classification; the installation or erection of products manufactured under this classification which is to be reported separately in the applicable classification; the manufacture of concrete blocks, bricks, poles, piles, tiles and beams which is to be reported separately in classification 3105-06; the manufacture of statuary and ornamental items from plaster or concrete which is to be reported separately in classification 3509; and the manufacture of brick or clay products which is to be reported separately in classification 3501.

Special note: This classification differs from classification 3509 "statuary and ornament manufacturing" in that products manufactured in classification 3105 are rough, do not require perfect finishes, and are generally for construction use; products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105.)

Applies to:

Businesses engaged in the manufacture of concrete blocks, bricks, poles, tiles, and beams.

This classification does not apply to the manufacture of these products when done by construction contractors for use in the construction project.

Work activities and processes include, but are not limited to:

- Receiving raw materials from others. Raw materials include sand, gravel, cement, cinders, aggregates, mesh wire, rods, and, in some cases, plastics.
- Mixing raw materials with water.
- Feeding the mixture of raw materials and water into molds or forming machines.
- Inserting heavy mesh wire or rods into the molds for strength.
- Steam drying the formed products.
- Placing dried products in the yard for curing.
- Shipping products.

Exclusions:

- Worker hours engaged in the production of raw materials are reported separately in the applicable mining, quarrying, or excavation classification;

- Worker hours engaged in installation or erection of products manufactured under this classification are reported separately in the classification applicable to the work being performed;
- Manufacturing concrete sewer and irrigation pipes, septic tanks, and concrete products not classified elsewhere is classified in 3105-07;
- Manufacturing statuary and ornamental items from plaster or concrete is classified in 3509;
- Manufacturing brick or clay products is classified in 3501.

Special note: This classification differs from classification 3509 "statuary or ornament manufacturing" in that products manufactured in classification 3105 are rough, do not require perfect finishes, and are generally for construction use; products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105.

3105-07 Concrete sewer and irrigation pipes, concrete septic tanks, and concrete products, N.O.C. manufacturing

Applies to:

Businesses engaged in the manufacture of concrete sewer and irrigation pipes, septic tanks and other concrete products not covered by another classification (N.O.C.).

This classification does not apply to the manufacture of these products when done by construction contractors for use in the construction project.

Concrete products manufactured include, but are not limited to:

- Burial vaults;
- Caskets;
- Catch basin covers;
- Chimney caps;
- Coffins;
- Columns;
- Incinerators;
- Irrigation pipes;
- Manhole covers;
- Monuments;
- Panels;
- Pier footings;
- Septic tanks;
- Sewer pipes;
- Tubs.

Work activities and processes include, but are not limited to:

- Receiving raw materials from others. Raw materials include sand, gravel, cement, cinders, aggregates, mesh wire, rods, and, in some cases, plastics.
- Mixing raw materials with water.
- Feeding the mixture of raw materials and water into molds or forming machines.
- Inserting heavy mesh wire or rods into the molds for strength.
- Steam drying the formed products.
- Placing dried products in the yard for curing.
- Shipping products.
- Manufacturing concrete panels generally involves the cutting and welding of metal to form a frame to which concrete fiberboard is

attached. The fabrication of the metal framing is included within the scope of this classification when performed by employees of an employer engaged in manufacturing concrete panels.

• Additional steps may involve applying an adhesive to the frame and attaching decorative material such as crushed rock, gravel, ceramic tile, or brick.

Exclusions:

• Worker hours engaged in the production of raw materials are reported separately in the applicable mining, quarrying, or excavation classification;

• Worker hours engaged in installation or erection of products manufactured under this classification are reported separately in the classification applicable to the work being performed;

• Manufacturing concrete blocks, bricks, poles, piles, tiles, and beams is classified in 3105-06;

• Manufacturing statuary and ornamental items from plaster or concrete is classified in 3509;

• Manufacturing brick or clay products is classified in 3501.

Special note: This classification differs from classification 3509 "statuary and ornament manufacturing" in that products manufactured in classification 3105 are rough, do not require perfect finishes, and are generally for construction use; products manufactured in classification 3509 are for decorative purposes, are usually lighter weight, and have smoother or more perfect finishes than the concrete products manufactured in classification 3105.

AMENDATORY SECTION (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

WAC 296-17A-3403 Classification 3403.

3403-00 Aircraft: Manufacturing

~~((Applies to establishments engaged in the manufacture of aircraft. For the purposes of this classification "aircraft manufacturing" means the original manufacture of such aircraft as distinguished from rebuilding, modifying, or converting existing aircraft and applies only to the production of units that, when completed, are capable of in-air flight as distinguished from aircraft kits to be assembled by the purchaser that are not capable of air flight when sold. This classification includes aircraft operations incidental to the manufacture, such as test flights.~~

~~This classification excludes establishments engaged in the original manufacture of aircraft parts which are to be reported separately in classification 3405 or as otherwise provided for in WAC 296-17A-3405; the manufacture of aircraft kits which is to be reported separately in the classification applicable to the work being performed; modification, repair or conversions made to an existing aircraft which are to be reported separately in classification 6804; and the assembly of aircraft kits into an airplane which is to be reported separately in classification 6804.)~~

Applies to:

Businesses engaged in aircraft manufacturing.

For the purposes of this classification "aircraft manufacturing" means the original manufacture of such aircraft as distinguished from

rebuilding, modifying, or converting existing aircraft and applies only to the production of units that, when completed, are capable of in-air flight as distinguished from aircraft kits to be assembled by the purchaser that are not capable of air flight when sold.

Work activities include, but are not limited to:

• Aircraft operations incidental to the manufacture, such as test flights.

Exclusions:

• Manufacture of aircraft parts is classified in 3405, or as otherwise provided for in WAC 296-17A-3405;

• Manufacture of aircraft kits is classified in the classification applicable to the work being performed;

• Modifications, repairs or conversions made to an existing aircraft are classified in 6804;

• Assembly of aircraft kits into airplanes is classified in 6804.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3408 Classification 3408.

3408-00 Natural gas companies

~~((Applies to establishments engaged in the operation of natural gas companies which distribute gas through gas mains or pipes to local consumers. Employments covered in this classification include clerical office and sales personnel, store employees, meter readers, and drivers. This classification also includes local gas main connection, new construction and extension of lines, maintenance and operation of plant equipment, installation and repair of plant pressure regulators, and installation and repair of meters, appliances, furnaces and gas regulators on piping within a customers' premises when performed by employees of an employer subject to this classification.~~

~~This classification excludes contractors engaged in gas line construction, maintenance or repair who are to be reported separately in classification 0107; contractors engaged in the installation of heating systems who are to be reported separately in classification 0307; contractors engaged in the installation of gas appliances who are to be reported separately in classification 0607; and contractors engaged in the installation of hot water tanks who are to be reported separately in classification 0306.))~~

Applies to:

Businesses engaged in the operation of natural gas companies which distribute gas through gas mains or pipes to local consumers.

Work activities include, but are not limited to:

• Installation and repair of meters, appliances, furnaces, and gas regulators on piping within a customers' premises when performed by employees of an employer subject to this classification;

• Installation and repair of plant pressure regulators;

• Local gas main connection;

• Maintenance and operation of plant equipment;

• New construction and extension of lines.

Occupations include, but are not limited to:

• Clerical office;

- Drivers;
- Meter readers;
- Sales personnel;
- Store employees.

Exclusions:

- Contractors engaged in gas line construction, maintenance, or repair are classified in 0107;
- Contractors engaged in the installation of heating systems are classified in 0307;
- Contractors engaged in the installation of gas appliances are classified in 0607; and
- Contractors engaged in the installation of hot water tanks are classified in 0306.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3409 Classification 3409.**3409-00 Self-service gas stations**

~~((Applies to establishments engaged in self-service gas operations. A self-service station is a facility where the customers pump gas into their own vehicles with no assistance from any of the establishment's employees. Typically, the only employee involved in the operation is a cashier who monitors the pumps from inside a booth and collects the payment from the customer. Sales of cigarettes and limited snack items are allowed in this classification.~~

~~This classification excludes full service stations, establishments with both self-serve and full or limited service operations at the same location, or any type of service stations with gasoline operations that offer any repair or direct services to the customer's vehicle, regardless of the percentage of the activities, at the same location, which are to be reported separately in classification 3406; and establishments who operate a self-service gas station with a convenience store or mini-mart operations which are to be reported separately in classification 3410.~~

~~**Special note:** The extent and type of the groceries available for sale at a self-service only establishment must be determined to assign the appropriate classifications. Generally, if only convenience items such as oil, gas additives, cigarettes and snack foods such as candy, gum, chips, and soft drinks are available, classification 3409 would be allowed. However, if more than the items listed above are available such as milk, bread, canned food, or fast food service, classification 3410 would apply. Establishments with multiple locations are to be classified in accordance with the general reporting rule covering the operation of a secondary business.))~~

Applies to:

Businesses engaged in self-service gas operations.

A self-service station is a facility where the customers pump gas into their own vehicles with no assistance from any of the establishment's employees. Typically, the only employee involved in the operation is a cashier who monitors the pumps from inside a booth and collects the payment from the customer.

Limited items allowed to be sold include:

- Cigarettes and other tobacco items;
- Gas additives;
- Motor oil;
- Snack items such as candy, chips, gum, and soft drinks.

Exclusions:

• Full service stations and businesses with both self-serve and full or limited service as described in 3406 operations at the same location are classified in 3406;

• Any type of service station with gasoline operations that offers any repair or direct services to the customer's vehicle as described in 3406, regardless of the percentage of the activities, are classified in 3406; and

• Self-service gas stations with convenience stores, mini-mart operations, or grocery items such as milk, bread, canned foods, or fast food for sale are classified in 3410.

Special note: Establishments with multiple locations are classified in accordance with the general reporting rules covering the operation of a secondary business.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3410 Classification 3410.**3410-00 Convenience grocery stores or minimarkets with self-service gasoline operations**

~~((Applies to establishments engaged in operating convenience grocery stores or mini-markets with self-service gasoline operations. These establishments provide retail sale of convenience grocery items, not just snack items, in addition to self-service gasoline. Gasoline operations are limited to self-service only where the store employee is a cashier who monitors the pumps and collects the payments inside the store. Self-service/convenience store operations in classification 3410 differ from self-service gas stations in classification 3409 in that establishments in classification 3410 provide a more extensive line of grocery items. In addition to snack foods, staples such as bread, milk, and canned foods are available for sale. They may also prepare food such as sandwiches, chicken, jo jos, or hot dogs, and occasionally fill a customer's propane tank, and offer automobile or truck washing services, all of which is included within the scope of this classification.~~

~~This classification excludes establishments which provide any full service or limited services in addition to self-service operations at the same location which are to be reported separately in classification 3406; establishments which provide only self-service gasoline operations and whose grocery items are limited to prepared snack foods such as chips and candy, and cigarettes which are to be reported separately in classification 3409; and convenience stores with no gasoline services which are to be reported separately in classification 6403.)~~

Applies to:

Businesses engaged in operating convenience grocery stores or mini-markets with self-service gasoline operations.

These businesses provide retail sale of convenience grocery items, not just snack items, in addition to self-service gasoline.

Gasoline operations are limited to self-service only where the store employee is a cashier who monitors the pumps and collects the payments inside the store.

Self-service/convenience store operations in classification 3410 differ from self-service gas stations in classification 3409 in that establishments in classification 3410 provide a more extensive line of grocery items.

Products sold include, but are not limited to:

- Bread;
- Canned foods;
- Milk;
- Prepared foods such as chicken, hotdogs, jo-jos, and sandwiches;
- Snack foods.

Additional services provided include, but are not limited to:

- Automobile or truck washing services;
- Propane tank filling.

Exclusions:

- Businesses providing any full or limited services as described in 3406-00 in addition to self-service operations at the same location are classified in 3406;
- Businesses providing only self-service gasoline operations and whose grocery items are limited to prepared snack foods such as chips and candy, and cigarettes are classified in 3409; and
- Convenience stores with no gasoline services are classified in 6403.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3412 Classification 3412.

~~((3412-00 Automobile and truck: Body and fender repair shops~~

~~Applies to establishments engaged in repairing and refinishing automobile and truck body panel components for others. Work contemplated by this classification includes, but is not limited to, all phases of auto body repair work and panel replacement, finish removal, sand-blasting or plastic medium blasting, painting, washing, vacuuming, and waxing vehicles, glass repair, upholstery work, and automobile and truck detailing such as striping, vinyl repair, window tinting (applying film to windows), installation of body and wheel molding and sun-roofs, incidental glass repair or mechanical repair associated with a collision repair or car restoration, and installation of electronic accessories when performed by employees of an employer subject to this classification. The repair of fiberglass or sheet metal boat bodies and spray-on pickup truck bedliners is also included in this classification. This classification includes shop managers, parts and paint mixing department employees, towing service for in-shop repairs, incidental sales of rebuilt cars and trucks, and customer courtesy van or car drivers. Estimators may be reported separately in classification 6303 provided all the conditions of the general reporting rule covering standard exception employees have been met.~~

~~This classification excludes the routine servicing or repair of automobiles or trucks not done in conjunction with collision repair or car restoration which is to be reported separately in classification 3411; the servicing or repair of mechanical or electrical systems in boats which is to be reported separately in classification 3414; and the repair of wooden boats which is to be reported separately in classification 2903.~~

~~**Special notes:** Auto body shops will routinely have a physically separate area where they store and mix paints. The separate paint storage and mixing area is generally a requirement of local fire codes and insurance policies. This separate area does not constitute a separate operation subject to a different classification. Some shops may also carry an inventory of repair panels, trim pieces and molding. Regardless of the volume of parts and supplies it is included within the basic scope of classification 3412. Establishment engaged in providing towing service for hire are to be reported separately in classification 1109. For purposes of this classification "towing for hire" means a towing service not performed in connection with repairs to be done by the repair shop.~~

~~Care must be taken in assigning classification 3411-01 to an establishment engaged in body and fender repair. An establishment could have both classifications 3411 and 3412 if they also provide routine mechanical or electrical repair services not in conjunction with collision repair or car restoration.)~~

3412-00 Automobile or truck: Body or fender repair

Applies to:

- Businesses engaged in repairing and refinishing automobile and truck body panel components for others.
- Businesses engaged in repairing fiberglass or sheet metal boat bodies or spray-on pickup truck bedliners.

Work activities include, but are not limited to:

- All phases of automobile body repair work and panel replacement;
- Automobile and truck detailing such as striping, vinyl repair, window tinting (applying film to windows);
- Finish removal;
- Glass repair;
- Incidental mechanical repair associated with a collision repair or car restoration;
- Incidental sales of rebuilt cars and trucks;
- Installation of body and wheel molding and sunroofs;
- Installation of electronic accessories when performed by employees of an employer subject to this classification;
- Painting, washing, vacuuming, and waxing vehicles;
- Sandblasting or plastic medium blasting;
- Towing service for in-shop repairs;
- Upholstery work.

Work occupations include, but are not limited to:

- Customer courtesy van or car drivers;
- Parts and paint mixing department employees;
- Shop managers.

Note: Estimators may be reported separately in classification 6303 provided all the conditions of the general reporting rule covering standard exception employees have been met.

Exclusions:

- Repair of wooden boats is classified in 2903.
- Routine servicing or repair of automobiles or trucks not done in conjunction with collision repair or car restoration are classified in 3411.
- Servicing or repair of mechanical or electrical systems in boats is classified in 3414.

Special notes: Auto body shops will routinely have a physically separate area where they store and mix paints. The separate paint storage and mixing area is generally a requirement of local fire codes and insurance policies. This separate area does not constitute a separate operation subject to a different classification. Some shops may also carry an inventory of repair panels, trim pieces, and molding. Regardless of the volume of parts and supplies it is included within the basic scope of classification 3412. Businesses engaged in providing towing service for hire are reported separately in classification 1109. For purposes of this classification "towing for hire" means a towing service not performed in connection with repairs to be done by the repair shop.

Care must be taken in assigning classification 3411-01 to a business engaged in body and fender repair. A business could have both classifications 3411 and 3412 if they also provide routine mechanical or electrical repair services not in conjunction with collision repair or car restoration.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3501 Classification 3501.

3501-00 Brick or clay products, N.O.C: Manufacturing

~~((Applies to establishments engaged in the manufacture of brick or clay products not covered by another classification (N.O.C.), such as, but not limited to, drainage or roofing tiles, building or paving bricks, wall copings, glazed or unglazed sewer or drain pipes or conduits, or similar products which are generally for industrial or construction use. Clay, which is any earth that forms a paste when added to water and hardens when heated, is widely used in making bricks and other products as described above. Brick is a molded rectangular block of clay, baked by the sun or in a kiln until hard. Similar products made of earthenware, which is a variety of coarse, porous baked clay, are included in this classification. To make bricks, clay is broken up by dry pan grinders. After grinding, the particles pass through any one of several types of screens used for separating and grading. The mixture is fed through a pug mill to be cut and mixed then mixed with water to the desired consistency. After tempering, the pug mill extrudes a column of clay through a die, which shapes and determines the dimensions of the brick. A rotating wire cutter slices the column into proper thicknesses. Bricks are either machine molded or hand molded. The "green" bricks must be dried by sun and air, or in natural gas or electric-fired regulated kilns prior to firing. Firing dehydrates, oxidizes, and vitrifies the bricks. To make other products, clay is mixed with sand or shale, ground in a mixing machine and water is added. The liquid substance is mechanically poured into standard or specially shaped molds. All products are dried by natural warm air or steam heat. After removal from the molds, products are baked in kilns.~~

If glazing is desired, salt is added to the kiln; the salt vaporizes and coats the products. To produce a greater degree of concentration, pressing or repressing operations may be performed, usually with hydraulic presses, subsequent to the actual formation of the products.

This classification excludes the production of raw materials which is to be reported separately in the applicable mining, quarrying or excavation classification; installation or erection of any products manufactured by establishments in this classification which is to be reported separately in the classification applicable to the type of construction or installation work being performed; the manufacture of household or decorative pottery items, including tile, which is to be reported separately in classification 3503; and the manufacture of statuary and ornamental items from concrete or plaster which is to be reported separately in classification 3509.

Special note: Clays are generally mined by the open-pit method. After clay has been extracted, it may be stockpiled inside for use during inclement weather. In most cases, the manufacturing of brick takes place alongside the extraction site. Clay is delivered to the manufacturing site only when clay of a different characteristic is needed to blend with the "home" clay.

3501-01 Refractory products: Manufacturing

Applies to establishments engaged in the manufacture of refractory products such as, but not limited to, fireproofing tile or bricks, roofing tile, flue lining, boiler or stoker tiles, enameled bricks, retorts, kiln parts, or crucibles from refractory clays with or without other refractory materials. Refractory clays are resistant to heat. Refractory materials, such as alumina, silica, and magnesite, dolomite, bauxite, do not significantly deform or change chemically in high temperatures. Usually all types of refractory products are produced in the same plant. Clay and other materials are ground, screened and mixed with water in a mixing machine. The partly fluid substance is poured into molds to form the product. After removal of the forms, items are kiln dried. The enamels are vitreous coatings produced from solutions of chemicals, salt, lead oxide or tin, into which the brick is dipped. Enameled brick requires two or three kiln burns.

This classification excludes the production of raw materials which is to be reported separately in the applicable mining, quarrying or excavation classification; installation or erection of any products manufactured by establishments in this classification which is to be reported separately in the classification applicable to the type of construction or installation work being performed; the manufacture of household or decorative pottery items, including tile, which is to be reported separately in classification 3503; and manufacture of statuary and ornamental items from plaster or concrete which is to be reported separately in classification 3509.)

Applies to:

Businesses engaged in manufacturing brick or clay products not covered by another classification (N.O.C.).

Clay is any earth that forms a paste when added to water and hardens when heated, and is widely used in making bricks and other products as described below.

Brick is a molded rectangular block of clay, baked by the sun or in a kiln until hard.

Products manufactured include, but are not limited to:

- Building or paving bricks;

- Drainage tiles;
- Glazed or unglazed sewer pipes, drain pipes, or conduits;
- Roofing tiles;
- Wall copings;
- Similar products, which are generally for industrial or construction use;
- Similar products made of earthenware; a variety of coarse, porous baked clay; are included in this classification.

Work activities and processes to make bricks include:

- Clay is broken up by dry-pan grinders;
- After grinding, the particles pass through any one of several types of screens used for separating and grading;
- The mixture is fed through a pug mill to be cut and mixed then mixed with water to the desired consistency;
- After tempering, the pug mill extrudes a column of clay through a die, which shapes and determines the dimensions of the brick;
- A rotating wire cutter slices the column into proper thicknesses;
- Bricks are either machine molded or hand molded;
- "Green" bricks must be dried by sun and air, or in natural gas or electric-fired regulated kilns prior to firing;
- Firing dehydrates, oxidizes, and vitrifies the bricks.

Work activities and processes to make other clay products include:

- Clay is mixed with sand or shale, ground in a mixing machine and water is added;
- The liquid substance is mechanically poured into standard or specially shaped molds;
- All products are dried by natural warm air or steam heat;
- After removal from the molds, products are baked in kilns;
- If glazing is desired, salt is added to the kiln; the salt vaporizes and coats the products;
- To produce a greater degree of concentration, pressing or repressing operations may be performed, usually with hydraulic presses, subsequent to the actual formation of the products.

Exclusions:

- Worker hours engaged in the production of raw materials are reported separately in the applicable mining, quarrying or excavation classification;
- Worker hours engaged in installation or erection of any products manufactured by establishments in this classification are reported separately in the classification applicable to the type of construction or installation work being performed;
- Manufacturing household or decorative pottery items, including tile, is classified in 3503;
- Manufacturing statuary and ornamental items from concrete or plaster is classified in 3509.

Special note: Clays are generally mined by the open-pit method. After clay has been extracted, it may be stockpiled inside for use during inclement weather. In most cases, the manufacturing of brick takes place alongside the extraction site. Clay is delivered to the manufacturing site only when clay of a different characteristic is needed to blend with the "home" clay.

3501-01 Refractory products: Manufacturing

Applies to:

Businesses engaged in manufacturing refractory products.

Refractory clays are resistant to heat. Refractory materials, such as alumina, silica, and magnesite, dolomite, bauxite, do not significantly deform or change chemically in high temperatures.

Products manufactured from refractory clays with or without other refractory materials include, but are not limited to:

- Boiler or stoker tiles;
- Crucibles;
- Enameled bricks;
- Fireproofing tile or bricks;
- Flue lining;
- Kiln part;
- Retorts;
- Roofing tile.

Usually all types of refractory products are produced in the same plant.

Work activities and processes include, but are not limited to:

- Clay and other materials are ground, screened and mixed with water in a mixing machine;
- The partly fluid substance is poured into molds to form the product;
- After removal of the forms, items are kiln dried;
- Enamels are vitreous coatings produced from solutions of chemicals, salt, lead oxide or tin, into which the brick is dipped;
- Enameled brick requires two or three kiln burns.

Exclusions:

- Worker hours engaged in production of raw materials are reported separately in the applicable mining, quarrying or excavation classification;
- Worker hours engaged in installation or erection of any products manufactured by establishments in this classification are reported separately in the classification applicable to the type of construction or installation work being performed;
- Manufacturing household or decorative pottery items, including tile, is classified in 3503;
- Manufacturing statuary and ornamental items from plaster or concrete is classified in 3509.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-3512 Classification 3512.

3512-02 Plastic goods: Manufacturing - Cutting, milling or bending

~~((Applies to establishments engaged in the manufacture of a variety of plastic goods from premanufactured components such as sheets, rods, or tubes by cutting, milling, or bending. Products include, but are not limited to, display stands, racks, dispensers for snack food items, vinyl windows and sashes, fiberglass panels used for aircraft or recreational vehicle interiors, and signs. Essentially anything that can be done with wood can be done with plastic, so shops in this classification usually resemble a cabinet or woodworking shop. They use the same type of tools such as, but not limited to, saws, routers, planers, and grinders, to cut or mill the plastic goods. To bend plas-~~

tie material, it is first heated in an oven or with a torch, then bent to shape. Buffers are used for polishing, or the pieces may be flame polished (heated with a gas torch). Products may be formed by joining pieces with glue, hardware or other fasteners.

~~This classification excludes establishments engaged in the manufacture of plastic items by blow molding, extrusion, vacuum forming, foam, rotary, or liquid molding, or injection molding, and establishments engaged in the manufacture of artificial marble items or graphite composite goods, which are to be reported separately in classification 3510; establishments engaged in the manufacture of fiberglass goods which are to be reported separately in classification 3511; and sign manufacturers that purchase precut plastic backings from others, then paint lettering or designs or attach vinyl lettering to them in their own shops which are to be reported separately in classification 4109.~~

~~**Special note:** The cutting, milling, or bending of plastic goods incidental to the manufacturing process for products made from wood, metal or other materials is included in the classification applicable to those manufacturing processes.))~~

Applies to:

Businesses engaged in the manufacture of a variety of plastic goods from premanufactured components such as sheets, rods, or tubes by cutting, milling, or bending.

Products manufactured include, but are not limited to:

- Dispensers for snack food items;
- Display stands;
- Fiberglass panels used for aircraft or recreational vehicle interiors;
- Racks;
- Signs;
- Vinyl windows and sashes.

Equipment used include, but are not limited to:

- Grinders;
- Planers;
- Routers;
- Saws.

Work activities include, but are not limited to:

- Cutting and milling plastics;
- Heating plastic material in an oven or with a torch, then bending to shape;
- Using buffers for polishing;
- Flame polishing (heated with a gas torch);
- Forming products by joining pieces with glue, hardware, or other fasteners.

Exclusions:

- Manufacture of plastic items by blow molding, extrusion, vacuum forming, foam, rotary, or liquid molding, or injection molding is classified in 3510;
- Manufacture of artificial marble items or graphite composite goods is classified in 3510;
- Manufacture of fiberglass goods is classified in 3511;
- Sign manufacturers that purchase precut plastic backings from others, then paint lettering or designs or attach vinyl lettering to them in their own shops is classified in 4109.

Special note: The cutting, milling, or bending of plastic goods incidental to the manufacturing process for products made from wood, metal, or other materials is included in the classification applicable to those manufacturing processes.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3513 Classification 3513.

3513-00 Rubber goods, N.O.C.: Manufacturing

(~~Applies to establishments engaged in manufacturing rubber goods not covered by another classification (N.O.C.) from natural or synthetic rubber which may be hard, soft, or liquid. Products manufactured in this classification include a wide variety of items such as, but not limited to, gaskets, seals, floor tiles, O-rings, hoses, belts, rubber bands, foam rubber cushions or pads, sponge rubber novelties, shoe parts, floor mats, interior pieces for computer circuit boards, and latex rubber goods such as gloves. Establishments in this classification also mix and compound rubber for sale to tire dealers that recap or retread tires. This classification includes establishments that manufacture rubber tires, or that shred used tires or other rubber products. Used rubber is run through granulators or rotary shearers that shred it to small pieces. Shredded material can be used as filler for asphalt for running tracks, or mixed with coal for fuel in industrial plants or further processed into oil. This classification also includes establishments that use heavy machinery to cut used tires into large pieces which are then formed into bumpers for boats, loading docks or similar items. Manufacturing processes include washing, mixing, rolling, extruding, calendaring, molding, and curing, all of which cause chemical reactions to the rubber until it reaches the desired "property or state." Vulcanization, which improves the strength, resiliency and odor of rubber by combining it with sulfur or other additives in the presence of heat and pressure, occurs in various stages of manufacturing processes. Machinery includes but is not limited to: *Shearer*: Cuts bulk rubber into strips or chunks. *Extruder*: Mixes and heats pieces of rubber to high temperature, then forces the mixture out through dies, forming it into "ropes." O-rings are made with extruded ropes.) *Rubber mill*: Has two heavy rollers (each about 1 foot diameter) that spin towards each other; the friction of the spinning rollers causes heat. Strips of raw rubber and dry chemicals are fed into the rollers where they are mashed and pressed, forming it into different grades or densities. The rubber emerges from the mill in flat, pliable strips, ready for further treatments. *Calendar*: Passes rubber through more rollers which work it to a smooth, even, glossy finish. *Hydraulic steam press*: There are several types of molding which involve placing strips of the rubber after it has been milled and rolled into cast iron molds. The molds are inserted into a press where heat and pressure are applied until the rubber is molded to desired shape, then removed and cooled. *Injection mold press*: Rubber is shot into the cavity of the molds, and the press heats it to an almost liquid form, then it becomes stable. A vacuum pump sucks air from the molds to form the product. *Deflasher machine*: Resembles a clothes dryer with a basket inside; used to remove flashing (the excess rubber that has squeezed out of the mold during forming). Molded items are~~

placed in the basket; nylon pellets are added to the machine. As the machine spins, the pellets beat the flashing from the molded pieces. Flashing is sometimes trimmed by hand with exacto knives or smoothed on grinders. *Curing oven:* The final step for most processes which dries and sets the rubber. Establishments subject to this classification may also make some products by cutting and gluing premanufactured materials. If any rubber molding is performed, the entire operation is to be covered under this classification.

This classification excludes establishments engaged in the manufacture of rubber goods by cutting and gluing premanufactured rubber or composite sheets (*no molding*) which are to be reported separately in classification 3802; tire dump operations which are to be reported separately in classification 4305; and the manufacture of synthetic rubber and the "advanced recycling" of shredded tires or rubber which is to be reported separately in classification 3407.)

Applies to:

- Businesses engaged in manufacturing rubber goods not covered by another classification (N.O.C.) from natural or synthetic rubber, which may be hard, soft, or liquid.
- Businesses that manufacture rubber tires; mix and compound rubber for sale to tire dealers that recap or retread tires; use heavy machinery to cut used tires into large pieces which are then formed into bumpers for boats, loading docks or similar items; or shred used tires or other rubber products.

Rubber goods manufactured in this classification include a wide variety of items such as, but not limited to:

- Belts;
- Floor mats;
- Floor tiles;
- Foam rubber cushions or pads;
- Gaskets;
- Hoses;
- Interior pieces for computer circuit boards;
- Latex rubber goods, such as gloves;
- O-rings;
- Rubber bands;
- Seals;
- Shoe parts;
- Sponge rubber novelties.

Shredding tires or other rubber products includes:

- Running used rubber through granulators or rotary shearers that shred it to small pieces.
- Shredded material can be used by customers as filler for asphalt for running tracks, for mixing with coal, for fuel in industrial plants, or for further processing into oil.

Manufacturing processes includes:

- Washing, mixing, rolling, extruding, calendaring, molding, and curing, all of which cause chemical reactions to the rubber until it reaches the desired property or state.
- Vulcanization, which improves the strength, resiliency and odor of rubber by combining it with sulfur or other additives in the presence of heat and pressure.
- Trimming flashing by hand with knives or smoothing with grinders.

• Businesses subject to this classification may also make some products by cutting and gluing premanufactured materials. If any rubber molding is performed, the entire operation is covered under this classification.

Machinery includes, but is not limited to:

- Shearer - Cuts bulk rubber into strips or chunks.
- Extruder - Mixes and heats pieces of rubber to high temperature, then forces the mixture out through dies, forming it into "ropes." O-rings are made with extruded ropes.
- Rubber mill - Has two heavy rollers (each about 1 foot diameter) that spin towards each other; the friction of the spinning rollers causes heat. Strips of raw rubber and dry chemicals are fed into the rollers where they are mashed and pressed, forming it into different grades or densities. The rubber emerges from the mill in flat, pliable strips, ready for further treatments.
- Calendar - Passes rubber through rollers which work it to a smooth, even, glossy finish.
- Hydraulic steam press - Placing strips of rubber into cast iron molds after they have been milled and rolled. The molds are inserted into a press where heat and pressure are applied until the rubber is molded to desired shape, then removed and cooled.
- Injection mold press - Rubber is shot into the cavity of molds. The press heats it to an almost liquid form, then it becomes stable. A vacuum pump sucks air from the molds to form the product.
- Deflasher machine - Resembles a clothes dryer with a basket inside and used to remove flashing (the excess rubber that has squeezed out of the mold during forming). Molded items are placed in the basket. Nylon pellets are added to the machine. As the machine spins, the pellets beat the flashing from the molded pieces.
- During oven - The final step for most processes which dries and sets the rubber.

Exclusions:

- Businesses manufacturing rubber goods without rubber molding, but only by cutting and gluing premanufactured rubber or composite sheets are classified in 3802;
- Tire dump operations are classified in 4305;
- Manufacturing synthetic rubber and the "advanced recycling" of shredded tires or rubber is classified in 3407.

AMENDATORY SECTION (Amending WSR 09-16-110, filed 8/4/09, effective 10/1/09)

WAC 296-17A-3603 Classification 3603.

3603-10 Furniture stripping and refinishing; metal plating or polishing, rustproofing, N.O.C.

~~((Applies to establishments engaged in stripping and refinishing wood or metal furniture, or metal plating (a coating of metal on an object), polishing, and rustproofing that is not covered by another classification (N.O.C.). Furniture refinishing contemplated by this classification includes, but is not limited to, preparing articles for finishing or refinishing by dipping in chemical solutions/acid baths to remove the old finish or dirt, sanding and wire brushing as needed, thoroughly removing all residues, applying new finish by brushing,~~

rolling, spraying or dipping, air or oven drying, and any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification. *Metal plating* contemplated by this classification may be done by dipping in hot solution or spraying with a very high pressure, heated gun. *Electroless plating* is another type of dipping process which can be used to plate metals, plastics, and other materials by first preparing the surface with a chemical to ensure adhesion of the metal plating material. *Rustproofing*, as contemplated by this classification, is usually applied by dipping or spraying. Plated items may be finished by lacquering and polishing. *Polishing* may also be conducted as a separate contract on metal and nonmetal items.

This classification excludes furniture finishing/refinishing done in conjunction with manufacturing or repair which is to be reported separately in classification 2905; metal plating, polishing, rustproofing and finishing done in conjunction with manufacturing of metal or a metal product which is to be reported separately as applicable to the product; undercoating of automobiles or other vehicles which is to be reported separately in classification 3411; metal plating done by an *electrolytic method* and rustproofing by *anodizing method* which are to be reported separately in classification 3603-11.

3603-11 Electroplating and detinning, N.O.C.

Applies to establishments engaged in providing electroplating or detinning services that are not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to, preparing items by dipping in chemical solution/acid baths to remove old finish or dirt, sanding and wire brushing as needed, removing all residues thoroughly, electroplating to create the new finish, air or oven drying, any appropriate finish work such as polishing and buffing, and electrolytic or chemical baths for detinning processes, when done by employees of an employer having operations subject to this classification. *Electroplating* (including galvanizing and tinning) to achieve a protective or decorative coating is done by immersing the metal object in a solution which contains the desired metallic particles (metals commonly used are gold, silver, nickel, zinc and chromium) and passing an electric charge through the solution which causes the metal particles to adhere to the object being plated. Typical items plated include, but are not limited to, jewelry, plumbing hardware and components, silverware, eyeglass frames, medical instruments, and various specialized industrial components of any size. Plated items may be polished and lacquered as part of the finishing process. This classification includes *anodizing* to rustproof aluminum and some aluminum alloys by immersion in an acid bath and applying an electric charge to the metal which causes the finish to form on it. *Detinning* is the process of recovering tin from tin plated scrap. The "chemical process" involves using caustics and an oxidizing agent which causes the tin to separate from the metal it was plated to. A variation of this method introduces electrolysis to achieve a purer reclamation. The "chlorine process" uses chlorine applied under pressure to dissolve the tin and separate it from the tin plated scrap.

This classification excludes any electroplating or rustproofing by electrolytic methods done in conjunction with the manufacturing of metal or a metal product which is to be reported separately as applicable to the product; metal plating, polishing or rustproofing not using electrolytic methods which is to be reported separately in classi-

fication 3603-10; galvanizing or tinning done by hot dip process which is to be reported separately in classification 3604; and any detinning not done by a specialty shop as described above.

~~3603-12 Painting in shop, N.O.C.~~

~~Applies to establishments engaged in providing painting services at their shop, that are not covered by another classification (N.O.C.). This includes painting wood, metal, plastic, glass or other items. Customers include manufacturers, cabinetmakers or millwork manufacturers who do not do their own finish painting/staining/varnishing, or individuals who need only one item painted. Work contemplated by this classification includes, but is not limited to, preparing items for finishing by cleaning, sanding and wire brushing as needed, applying new finish by brushing, rolling, spraying or dipping, air or oven drying, and any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification. This classification includes application of nonmetallic coatings by dipping (such as nonstick surfaces) and painting with an electrostatic paint gun.~~

~~This classification excludes sign painting when done by establishments who do not manufacture the sign, which is to be reported separately in classification 4109; any painting done in conjunction with the manufacture of a sign which is to be reported separately in classification 2903, 3402, 3503 or 3510 as applicable; painting done in conjunction with the repair of an exterior sign which is to be reported separately in classification 0403; furniture stripping and refinishing services which are to be reported in classification 3603-10; furniture finishing done in conjunction with manufacturing or repair which is to be reported separately in classification 2905; automobile painting which is to be reported separately in classification 3412; the permanent yard or shop of a painting contractor which is to be reported separately in classification 5206 provided the conditions set forth in WAC 296-17A-5206 have been met; and the painting/staining/varnishing of any item done in conjunction with the manufacturing of that item which is to be reported separately as applicable to the product.)~~

Applies to:

Businesses engaged in stripping and refinishing wood or metal furniture; or metal plating (a coating of metal on an object), polishing, and rustproofing that is not covered by another classification (N.O.C.).

Furniture refinishing may include, but is not limited to:

- Preparing articles for finishing or refinishing by dipping in chemical solutions/acid baths to remove the old finish or dirt;
- Sanding and wire brushing as needed;
- Thoroughly removing all residues;
- Applying new finish by brushing, rolling, spraying or dipping, air or oven drying;
- Any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification.

Additional work activities and processes may include, but are not limited to:

- Electroless plating is a type of dipping process which can be used to plate metals, plastics, and other materials by first preparing

the surface with a chemical to ensure adhesion of the metal plating material;

• Metal plating contemplated by this classification may be done by dipping in hot solution or spraying with a very high-pressure, heated gun;

• Plated items may be finished by lacquering and polishing;

• Polishing, which may also be conducted as a separate contract on metal and nonmetal items;

• Rustproofing, as contemplated by this classification, is usually applied by dipping or spraying.

Exclusions:

• Furniture finishing/refinishing done in conjunction with manufacturing or repair is classified in 2905;

• Metal plating, polishing, rustproofing and finishing done in conjunction with manufacturing of metal or a metal products is classified in the class applicable to the product manufactured;

• Undercoating of automobiles or other vehicles is classified in 3411;

• Metal plating done by an *electrolytic method* or rustproofing by *anodizing method* are classified in 3603-11.

3603-11 Electroplating and detinning, N.O.C.

Applies to:

Businesses engaged in providing electroplating or detinning services that are not covered by another classification (N.O.C.).

Typical items plated include, but are not limited to:

• Eyeglass frames;

• Jewelry;

• Medical instruments;

• Plumbing hardware and components;

• Silverware;

• Various specialized industrial components of any size.

Work activities and processes include, but are not limited to:

• Preparing items by dipping in chemical solution/acid baths to remove old finish or dirt;

• Sanding and wire brushing as needed to remove all residues thoroughly;

• Electroplating to create the new finish. Electroplating (including galvanizing and tinning) to achieve a protective or decorative coating is done by immersing the metal object in a solution which contains the desired metallic particles (metals commonly used are gold, silver, nickel, zinc and chromium) and passing an electric charge through the solution which causes the metal particles to adhere to the object being plated;

• Air or oven drying;

• Finish work such as polishing, buffing, or lacquering;

• Anodizing to rustproof aluminum and some aluminum alloys by immersion in an acid bath and applying an electric charge to the metal which causes the finish to form on it;

• Electrolytic or chemical baths for detinning processes, when done by employees of an employer having operations subject to this classification. Detinning is the process of recovering tin from tin plated scrap. The "chemical process" involves using caustics and an oxidizing agent, which causes the tin to separate from the metal it was plated to. A variation of this method introduces electrolysis to

achieve a purer reclamation. The "chlorine process" uses chlorine applied under pressure to dissolve the tin and separate it from the tin plated scrap.

Exclusions:

- Any electroplating or rustproofing by electrolytic methods done together with the manufacturing of metal or a metal product is classified in the classification applicable to the product;
- Metal plating, polishing or rustproofing not using electrolytic methods is classified in 3603-10;
- Galvanizing or tinning done by hot dip process is classified in 3604;
- Any detinning not done by a specialty shop as described above is classified in the classification applicable to the business.

3603-12 Painting in shop, N.O.C.

Applies to:

Businesses engaged in providing painting services at their shop, not covered by another classification (N.O.C.).

Customers of business in this classification include, but are not limited to:

- Cabinetmakers or millwork manufacturers;
- Other types of manufacturers;
- Individuals who need only one item painted.

Work activities and processes include, but are not limited to:

- Preparing items made of wood, metal, plastic, glass, or other materials for finishing by cleaning, sanding and wire brushing as needed;
- Applying new finish by brushing, rolling, spraying or dipping;
- Air or oven drying;
- Any appropriate finish work, such as waxing, polishing and buffing, when done by employees of an employer having operations subject to this classification;
- Applying nonmetallic coatings by dipping (such as nonstick surfaces) or painting with an electrostatic paint gun.

Note: The permanent yard or shop of a painting contractor is reported separately in classification 5206 when the conditions set forth in WAC 296-17A-5206 have been met.

Exclusions:

- Sign painting, when done by businesses who do not manufacture the sign, is classified in 4109;
- Any painting done in conjunction with the manufacture of a sign is classified in 2903, 3402, 3503 or 3510 as applicable;
- Worker hours engaged in painting done together with the repair of an exterior sign is reported separately in classification 0403;
- Furniture stripping and refinishing services are classified in 3603-10;
- Furniture finishing done together with manufacturing or repair is classified in 2905;
- Automobile painting is classified in 3412;
- Painting/staining/varnishing of any item done together with the manufacturing of that item is classified in the classification applicable to the product manufacture.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3604 Classification 3604.

3604-16 Galvanizing or tinning - Not electrolytic, N.O.C.

~~((Applies to establishments engaged in providing galvanizing or tinning services, not using an electrolytic method, that are not covered by another classification (N.O.C.). This process uses molten zinc or tin dip to coat metals to deter corrosion (galvanizing) and tarnish (tinning). The process is used on all types of metal products from hand tools to automobile body parts and pieces of machinery. Work contemplated by this classification includes, but is not limited to, preparing metal by cleaning and washing in an acid solution, flushing with clean water, dipping in a metallic solution, immersion in the molten zinc or tin, and draining and/or blowing away the excess to achieve a smooth finish before cooling.~~

~~This classification excludes galvanizing or tinning using an electrolytic process which is to be reported separately in classification 3603-11 and any galvanizing or tinning operations conducted in conjunction with a metal or metal product manufacturing operation which is to be reported separately as appropriate to the product.))~~

Applies to:

Businesses providing galvanizing or tinning services not using an electrolytic method that are not covered by another classification (N.O.C.).

Galvanizing or tinning can be used on all types of metal products, from hand tools to automobile body parts and pieces of machinery.

Work activities and processes include:

- Using molten zinc or tin dip to coat metals to deter corrosion (galvanizing) and tarnish (tinning);
- Preparing metal by cleaning and washing in an acid solution;
- Flushing the metal with clean water;
- Dipping metal in a metallic solution;
- Immersing metal in molten zinc or tin;
- Draining or blowing away the excess zinc or tin to achieve a smooth finish;
- Cooling metal.

Exclusions:

- Worker hours engaged in galvanizing or tinning using an electrolytic process are reported separately in classification 3603-11;
- Any galvanizing or tinning operations conducted in conjunction with a metal or metal product manufacturing operation is classified as appropriate to the product manufactured.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3605 Classification 3605.

3605-28 Truck: Manufacturing or assembly

~~((Applies to establishments engaged in the manufacture or assembly of complete trucks. Truck manufacturers subject to this classifi-~~

~~ation are the nonpassenger type vehicles such as semi-trucks. These establishments may manufacture the chassis, body and other truck components or they may purchase any of these items from other manufacturers and simply assemble the trucks. Usually they will purchase the axle assemblies, transmissions, electrical and cooling systems, and steering gears from others. The determining factor to assign this classification is that they do the final assembly of the various components to make the truck operational.~~

~~This classification excludes auto or passenger vehicle manufacturing including pick-up trucks which is to be reported separately in classification 3402; truck component manufacturing which is to be reported separately in the appropriate manufacturing classification; and semi-truck repair and service centers which are to be reported separately in classification 6409.)~~

Applies to:

Businesses manufacturing or assembling complete trucks.

Truck manufacturers subject to this classification are the nonpassenger type vehicles such as semi-trucks. The determining factor to assign this classification is that they do the final assembly of the various components to make the truck operational.

Work activities include, but are not limited to:

- Manufacturing the chassis, body, and other truck components;
- Purchasing the chassis, body, or other truck components from other manufacturers and assembling the trucks;
- Purchasing the axle assemblies, transmissions, electrical and cooling systems, and steering gears from others.

Exclusions:

- Auto or passenger vehicle manufacturing including pick-up trucks is classified in 3402;
- Truck component manufacturing is classified in the appropriate manufacturing classification; and
- Semi-truck repair and service centers are classified in 6409.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3808 Classification 3808.

3808-00 Upholstery work, N.O.C.

~~((Applies to establishments engaged in upholstery work not covered by another classification (N.O.C.). Upholstery work is the custom finishing of furniture and vehicle interiors with stuffing, cushioning, springs, and covering material. Some sewing is usually necessary. Items upholstered include, but are not limited to, chairs, sofas, foot stools, caskets, and seats for aircraft, automobiles, boats or other recreational vehicles (RVs). Upholstery work becomes part of the furniture or vehicle as opposed to removable pillows or cushions which are not permanently attached to the structure. Upholstery shops also perform refurbishing or renovation work which involves removing the old materials, replacing springs, stuffing or cushioning as necessary, and covering with new material. They might replace a vinyl top, trim molding, striping tape, or door edge guards on a car or boat which is included in this classification when done by employees of an employer subject to this classification. Customers usually bring the furniture~~

~~or vehicle to the shop for upholstery work. Upholstery shops in this classification may sell some fabric as an incidental part of their operation; however, if any upholstery work is done at the shop, the entire operation is to be reported separately in classification 3808. This classification includes businesses which produce furniture entirely from foam rubber or other cushioning or stuffing, springs, and a covering material.~~

~~This classification excludes establishments engaged in the manufacture of mattresses which are to be reported separately in classification 3708; establishments engaged in making "throw pillows or cushions" which are to be reported separately in classification 3802; and establishments engaged in selling upholstery materials (but do no upholstery work) which are to be reported separately in classification 6406.~~

~~**Special note:** Classification 3808-00 may be assigned to physically separated upholstery departments of furniture or casket manufacturers, and automobile, aircraft, or RV manufacturers provided the conditions set forth in the general reporting rule covering the division of worker hours have been met.))~~

Applies to:

Upholstery work not covered by another classification (N.O.C.).

Upholstery work becomes part of the furniture or vehicle as opposed to removable pillows or cushions, which are not permanently attached to the structure. Upholstery shops may also perform refurbishing or renovation work.

Customers usually bring the furniture or vehicle to the shop for upholstery work.

This classification includes businesses that produce furniture entirely from foam rubber, other cushioning, or stuffing; springs; and a covering material.

Items upholstered include, but are not limited to:

- Caskets;
- Chairs;
- Footstools;
- Seats for aircraft, automobiles, boats or other recreational vehicles (RVs);
- Sofas.

Materials used include, but are not limited to:

- Covering material;
- Cushioning;
- Springs;
- Stuffing.

Work activities include, but are not limited to:

- Custom finishing of furniture and vehicle interiors.
- Sewing.
- Refurbishing or renovation work that involves removing the old materials, replacing springs, stuffing or cushioning as necessary, and covering with new material.
 - Replacing a vinyl top, trim molding, striping tape, or door edge guards on a car or boat is included in this classification when done by employees of an employer subject to this classification.
 - Selling some fabric is an incidental part of this classification. If any upholstery work is done at the shop, the entire operation is reported in classification 3808.

Exclusions:

- Manufacturing mattresses is classified in 3708;
- Manufacturing throw pillows or cushions is classified in 3802;
- Selling upholstery materials without doing upholstery work is classified in 6406.

Note: Classification 3808-00 may be assigned to physically separated upholstery departments of furniture or casket manufacturers, and automobile, aircraft, or RV manufacturers provided the conditions set forth in the general reporting rule covering the division of worker hours have been met. For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3903 Classification 3903.**3903-08 Sugar refining; molasses and syrup, N.O.C.: Manufacturing**

((Applies to establishments engaged in processing (milling) sugar cane and sugar beets into various forms of powdered and granulated sugar, and the manufacture of molasses and sugar syrups not covered by another classification (N.O.C.). Operations contemplated by this classification include the receipt of sugar cane or sugar beets directly from growers or dealers, crushing or rolling cane to obtain the juice or washing, slicing, and cooking the beets to obtain the juice, evaporating the juice to produce a crystallized substance, and further processing to produce the final product such as granular sugar, white powdered sugar, and brown sugar. Common by-products of a sugar refining operation are molasses and sugar syrups. In some cases an establishment may produce only the sugar syrup and/or molasses, not the crystallized forms of sugar. This classification applies to all of the above operations as the processes to produce sugar syrup and molasses products are similar to those used to produce crystallized sugar.

This classification excludes establishments engaged in the manufacture of fruit syrup, juice, cider, jam or jelly which are to be reported separately in classification 3902.)

Applies to:

- Businesses processing (milling) sugar cane and sugar beets into various forms of powdered and granulated sugar;
- Businesses manufacturing molasses and sugar syrups not covered by another classification (N.O.C.).

Work activities include, but are not limited to:

- Receiving sugar cane or sugar beets directly from growers or dealers;
- Crushing or rolling sugar cane to obtain the juice;
- Washing, slicing, and cooking sugar beets to obtain the juice;
- Evaporating the juice to produce a crystallized substance;
- Further processing to produce the final product.

Products manufactured include, but are not limited to:

- Brown sugar;
- Granular sugar;
- Molasses;
- Sugar syrups;
- White powdered sugar.

Exclusions:

• Manufacturing of fruit syrup, juice, cider, jam, or jelly is classified in 3902.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4103 Classification 4103.

4103-01 Newspaper publishing

~~((Applies to establishments engaged in publishing daily or periodic newspapers. This classification includes the printing, distribution and general maintenance activities of the newspaper. The printing operation usually consists of one of three processes: Offset lithography, letterpress, or flexography. After the papers are printed, they are cut, folded and stacked either manually or by computer-operated machinery. Route managers then distribute the papers to door-to-door carriers or independent route delivery drivers. Typical occupations covered by this classification include bindery workers, press operators, freight handlers, machine feeders, production helpers, maintenance workers and drivers.~~

~~This classification excludes photo composition or prepress work such as photographic or computerized typesetting, layout, paste up, editing, proofreading, camera work and automated platemaking which is to be reported separately in classification 4904; outside reporters, photographers, sales personnel, advertising staff and circulation solicitors who are to be reported separately in classification 6303; and establishments engaged in printing operations for newspapers published by other firms which are to be reported separately in classification 4101.~~

~~***Special note:** Employees of an employer subject to this classification who have both photographic composition/prepress work duties and duties which are subject to this classification (4103) are to be reported separately in classification 4103 without a division of work hours.*~~

~~Newspapers without any printing operations are governed by the general reporting rule covering businesses described by a standard exception classification.))~~

Applies to:

Businesses engaged in publishing daily or periodic newspapers.

Work activities include, but are not limited to:

- Printing which usually consists of one of three processes: Offset lithography, letterpress, or flexography;
- Cutting;
- Folding;
- Stacking either manually or by computer-operated machinery;
- Distribution using door-to-door carriers or independent route delivery drivers;
- General maintenance activities of the newspaper.

Occupations include, but are not limited to:

- Bindery workers;
- Drivers;
- Freight handlers;
- Machine feeders;
- Maintenance workers;

- Press operators;
- Production helpers.

Exclusions:

- Photo composition or prepress work such as photographic or computerized typesetting, layout, paste up, editing, proofreading, camera work, and automated platemaking is classified in 4904;
- Outside reporters, photographers, sales personnel, advertising staff, and circulation solicitors are classified in 6303;
- Businesses engaged in printing operations for newspapers published by other firms are classified in 4101.

Special note: Employees of an employer subject to this classification who have both photographic composition/prepress work duties and duties which are subject to this classification (4103) are classified in 4103 without a division of work hours.

Newspapers without any printing operations are governed by the general reporting rule covering businesses described by a standard exception classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4108 Classification 4108.**4108-15 Letter service shops and mailing or addressing companies**

~~((Applies to establishments engaged in providing large volume mailing and addressing services. This could be the routine mailing of periodicals or advertising brochures or a one-time letter to a particular list of recipients. Work contemplated by this classification includes, but is not limited to, folding, sorting, labeling and stuffing envelopes (either by hand or machine), clerical support, outside sales work, pick up of preprinted material from a client's location and delivery of completed work to the client or post office when done by employees of an employer having operations subject to this classification. Companies in this classification may also research and compile mailing lists as an additional service for their clients who are involved in direct mail advertising. This classification includes contracting of complete mail room services at a client's location.~~

~~This classification excludes printing of advertising material which is to be reported separately in classification 4101 and photocopying or duplicating of printed material, private mail box services (receipt and mailing of routine ready-to-mail letters and packages) for box renters, and package wrapping/ mailing services, all of which are to be reported separately in classification 6406.))~~

Applies to:

Businesses engaged in providing large volume mailing and addressing services.

This could be the routine mailing of periodicals or advertising brochures or a one-time letter to a particular list of recipients.

Work activities include, but are not limited to:

- Clerical office;
- Outside sales;
- Folding, sorting, labeling, and stuffing envelopes (either by hand or machine);

- Pick up of preprinted material from a client's location and delivery of completed work to the client or post office;
- Research and compile mailing lists as an additional service for their clients who are involved in direct mail advertising;
- Complete mail room services at a client's location.

Exclusions:

- Printing of advertising material is classified in 4101;
- Photocopying or duplicating of printed material, private mail box services (receipt and mailing of routine ready-to-mail letters and packages) for box renters, and package wrapping/mailing services, are classified in 6406.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4401 Classification 4401.**4401-00 Cold storage lockers**

~~((Applies to establishments that rent cold storage lockers to the public. These establishments do not own equity in the merchandise that is stored. Other than being cold storage facilities they are similar to mini-warehouse storage operations. Typically these operations will be a part of a retail or wholesale food or beverage establishment such as meat markets or wine stores. Typical activities contemplated by this classification include maintenance and security of the facility.~~

~~This classification excludes establishments engaged in fruit/vegetable freezer operations which are to be reported separately in classification 3902; establishments engaged in cold storage warehouse operations which are to be reported separately in classification 4404; general merchandise warehouses (not cold storage) which are to be reported separately in classification 2102; mini-storage warehouses which are to be reported separately in classification 4910; and field bonded warehouses which are to be reported in classification 2008.~~

~~**Special note:** The distinction between this classification (4401) and cold storage warehouse operations (4404) is that classification 4404 contemplates a warehouse type facility which stores general merchandise of commercial enterprises such as manufacturers and wholesalers as opposed to classification 4401 which rents lockers out to individuals for storage of personal items.))~~

Applies to:

Businesses that rent cold storage lockers to the public.

These businesses do not own equity in the merchandise that is stored. Other than being cold storage facilities they are similar to mini-warehouse storage operations. Typically these operations will be a part of a retail or wholesale food or beverage establishment such as meat markets or wine stores.

Work activities include, but are not limited to:

- Maintenance of facility;
- Security of facility.

Exclusions:

- Fruit and vegetable freezer operations are classified in 3902;
- Cold storage warehouse operations are classified in 4404;

- General merchandise warehouses (not cold storage) are classified in 2102;
- Mini-storage warehouses are classified in 4910; and
- Field bonded warehouses are classified in 2008.

Special note: The distinction between this classification (4401) and cold storage warehouse operations (4404) is that classification 4404 contemplates a warehouse type facility which stores general merchandise of commercial enterprises such as manufacturers and wholesalers as opposed to classification 4401 which rents lockers out to individuals for storage of personal items.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4402 Classification 4402.

4402-00 Ice: Manufacturing or harvesting

~~((Applies to establishments engaged in the manufacture of ice or the harvesting of naturally occurring ice from frozen bodies of water such as lakes or ponds. Ice is made by treating, forming, and freezing water in refrigeration compressor systems. The ice blocks may be scored, cut or sawed, then left in blocks or crushed and bagged. Refrigeration systems are generally freezer coils or pipes running through or around tanks, or refrigerated vaults. Other equipment includes, but is not limited to, tanks, tin molds of various pound sizes or shapes, filtering systems, ice cube making systems which consist of water tanks, tubing and cutting blades, conveyors, incline screws, holding bins, bagging machines, winches, and forklifts. Ice harvesting is the cutting of natural ice from lakes, ponds, or other bodies of water that have frozen over to a suitable thickness and storing it in refrigerated warehouses. Ice manufacturers and harvesters either deliver their ice directly to their customers or sell it to ice dealers.~~

~~This classification excludes ice dealers who are to be reported separately in classification 4402-02 and manufacturers of "dry ice" who are to be reported separately in classification 3701.~~

4402-02 Ice dealers

~~Applies to establishments engaged as dealers of ice manufactured or harvested by others. Ice dealers either pick up ice directly from manufacturers and deliver it, or store it in their own refrigerated warehouses or ice stations prior to delivery to their customers. Refrigerated, insulated trucks and trailers are used to deliver ice. Customers may include, but not be limited to, restaurants, lounges, service stations, grocery and convenience stores. Ice dealers may also own coin-operated dispensing machines, at various locations, which they refill.~~

~~This classification excludes establishments engaged in the manufacture of ice in refrigerated systems and the harvesting of natural ice which are to be reported separately in classification 4402-00 and establishments engaged in the manufacture of "dry ice" which are to be reported separately in classification 3701.)~~

Applies to:

- Businesses manufacturing ice made by treating, forming, and freezing water in refrigeration compressor systems;

• Harvesting of naturally occurring ice from frozen bodies of water such as lakes or ponds.

Work activities include, but are not limited to:

• Scoring, cutting, or sawing ice into blocks;
• Crushing ice blocks;
• Bagging crushed ice;
• Cutting of natural ice from lakes, ponds, or other bodies of water that have frozen over to a suitable thickness and storing it in refrigerated warehouses;
• Delivering ice directly to customers or selling it to ice dealers.

Equipment used include, but are not limited to:

• Bagging machines;
• Conveyors;
• Filtering systems;
• Forklifts;
• Holding bins;
• Ice cube making systems;
• Inline screws;
• Molds;
• Refrigeration systems (which are generally freezer coils or pipes running through or around tanks, or refrigerated vaults);
• Tubing or cutting blades;
• Water tanks;
• Winches.

Exclusions:

• Ice dealers are classified in 4402-02;
• Manufacturing of dry ice is classified in 3701.

4402-02 Ice Dealers

Applies to:

Dealers of ice manufactured or harvested by others.

Work activities include, but are not limited to:

• Picking up ice directly from manufacturers;
• Storing ice in their own refrigerated warehouses or ice stations prior to delivery to their customers;
• Delivering ice;
• Ice dealers may own coin-operated dispensing machines, at various locations, which they refill.

Equipment used include, but are not limited to:

• Refrigerated and insulated trucks;
• Trailers.

Customers include, but are not limited to:

• Grocery and convenience stores;
• Lounges;
• Restaurants;
• Service stations.

Exclusions:

• Manufacture of ice in refrigerated systems and the harvesting of natural ice is classified in 4402-00;
• Manufacturing of dry ice is classified in 3701.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4404 Classification 4404.

4404-05 Cold storage warehouse

~~((Applies to establishments engaged in providing a cold storage facility for general merchandise. These establishments do not own equity in the merchandise they store. The cold storage facility, which is maintained through a mechanical refrigeration process, typically stores items such as, but not limited to, food products, furs, and pharmaceuticals. Work contemplated by this classification includes maintenance and security of the facility, incidental repackaging, and loading and unloading of the warehoused items when performed by employees of an employer having operations subject to this classification.~~

~~This classification excludes establishments engaged in fruit/vegetable freezer operations which are to be reported separately in classification 3902; establishments engaged in cold storage locker operations which are to be reported separately in classification 4401; general merchandise warehouses (not cold storage) which are to be reported separately in classification 2102; mini-storage warehouses which are to be reported separately in classification 4910; and field bonded warehouses which are to be reported separately in classification 2008.~~

~~**Special note:** The distinction between this classification (4404) and cold storage locker operations (4401) is that classification 4404 contemplates a warehouse type facility which stores general merchandise of commercial enterprises such as manufacturers and wholesalers as opposed to classification 4401 which rents lockers out to individuals for storing of their personal items.)~~

Applies to:

Businesses providing a cold storage facility for general merchandise. These businesses do not own equity in the merchandise they store.

The cold storage facility is maintained through a mechanical refrigeration process.

Products stored include, but are not limited to:

- Food products;
- Furs;
- Pharmaceuticals.

Work activities include, but are not limited to:

• Maintenance and security of the facility;
• Incidental repackaging and loading and unloading of the warehoused items when performed by employees of an employer having operations subject to this classification.

Exclusions:

- Fruit/vegetable freezer operations are classified in 3902;
- Cold storage locker operations are classified in 4401;
- General merchandise warehouses (not cold storage) are classified in 2102;
- Mini-storage warehouses are classified in 4910; and
- Field bonded warehouses are classified in 2008.

Special note: The distinction between this classification (4404) and cold storage locker operations (4401) is that classification 4404

contemplates a warehouse type facility which stores general merchandise of commercial enterprises such as manufacturers and wholesalers as opposed to classification 4401 which rents lockers out to individuals for storing of their personal items.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4911 Classification 4911.

4911-00 Construction estimators

~~((Applies to employees of construction or erection contractors who work as cost and materials estimators preparing bids for contracts away from their employer's business offices. Employees covered by this rule may have exposure to the hazards of job sites, customer's premises, and/or undeveloped land. This classification is restricted in that employees reported in it cannot have any other duties other than construction estimating during their work shift or work day. Any employee working as an estimator and having any construction-related duties during the same work shift or day is to be reported separately in the applicable construction or erection classification for that entire work shift.))~~

Applies to:

Employees of construction or erection contractors who work as cost and materials estimators preparing bids for contracts away from their employer's business offices.

Work activities include, but are not limited to:

• Exposure to the hazards of job sites, customer's premises, and/or undeveloped land.

Notes: This classification is restricted in that employees reported in it cannot have any other duties other than construction estimating during their work shift or work day.
Any employee working as an estimator and having any construction-related duties during the same work shift or day is to be reported separately in the applicable construction or erection classification for that entire work shift.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5002 Classification 5002.

5002-00 Booming and rafting logs

~~((Applies to establishments engaged in booming and rafting logs on water. Booming involves making a barrier in the water usually with existing floating logs tied together with rope or chain to enclose other free floating logs. This type of barrier is referred to as a bundle. Rafting involves the use of a boom boat or tugboat to push the bundles together and tow the bundles to a particular destination. The destination may be a port where logs are loaded directly onto vessels, or to a sawmill, lumber mill or log sorting yard. This classification includes the loading of logs into or out of the water when performed by employees of the booming and rafting business.~~

~~**Special note:** Care should be exercised prior to assignment of this classification as the workers may be subject to federal laws covered by the Jones Act or by the U.S. Longshore and Harbor Workers Act.))~~

Applies to:

Businesses engaged in booming and rafting logs on water.

Work activities include, but are not limited to:

- Booming by making a barrier in the water, usually with existing floating logs tied together with rope or chain to enclose other free floating logs. This type of barrier is referred to as a bundle.
- Rafting which involves using a boom boat or tugboat to push the bundles together and towing the bundles to a particular destination.
- Loading logs into or out of the water when performed by employees of the booming and rafting business.

The logs may be rafted to a port where they are loaded directly onto vessels or to a sawmill, lumber mill, or log sorting yard.

Special note: Care should be exercised prior to assignment of this classification as the workers may be subject to federal laws covered by the Jones Act or by the U.S. Longshore and Harbor Workers Act.

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

WAC 296-17A-5109 Classification 5109.**5109-46 Heavy machinery & equipment including locomotive engines: Manufacture or repair; Press roller recoating/resurfacing**

~~((Applies to establishments engaged in the manufacture, assembly, and repair of heavy equipment. Machinery and equipment subject to this classification are usually made of steel and steel/iron castings and include, but are not limited to, bulldozers, dump trucks, graders, skidders, forklifts and logging towers. The component parts may weigh several hundred to thousands of pounds. Overhead cranes are commonly used in the assembly process. Machinery used in the manufacturing, assembly, and repair includes, but is not limited to, boring mills, lathes, iron workers, welders/cutters, cut saws, and drills. Some establishments use CNC (computer numeric controlled) machinery; however, most establishments in this classification primarily use manual machinery and conventional welders/cutters. Other common operations covered by this classification include paint, welding, and electronic assembly areas. This classification also includes establishments that repair, recoat or resurface press rollers such as, but not limited to, the type rollers used by printing and paper making mills. Operations include repairing the interior shafts of the rollers, then grinding fiberglass or ceramic finishes until they are smooth. For rubber-coated surfaces, they remove the old rubber from the metal surface, sandblast the roller, then recoat it with new rubber. Most establishments that recoat the surface with rubber will mix and extrude their own rubber which is included in this classification when performed by employees of employers subject to this classification.~~

~~This classification excludes the manufacture of nonpassenger type vehicles such as semi-trucks which are to be reported in classification 3605; auto or passenger vehicle manufacturing which is to be reported in 3402. Semi-truck repair and service centers are to be reported separately in classification 6409.~~

~~**Special note:** Field work as well as shop work is contemplated as an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The bro-~~

ken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.

5109-47 Heavy arms: Manufacturing or repair

Applies to establishments engaged in the manufacture or repair of heavy arms including large munitions. This classification applies to all types of guns 20 MM and larger including, but not limited to, aircraft guns, tank guns, naval guns, torpedoes and aircraft gun turrets.

Special note: Field work as well as shop work is contemplated as an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.)

Applies to:

• Businesses engaged in the manufacture, assembly, and repair of heavy equipment. Machinery and equipment subject to this classification are usually made of steel and steel/iron castings.

• Businesses that repair, recoat, or resurface press rollers.

Equipment manufactured/assembled/repaired include, but are not limited to:

- Bulldozers;
- Dump trucks;
- Graders;
- Forklifts;
- Logging towers;
- Rollers used by printing and paper making mills;
- Skidders.

Component parts may weigh several hundred to thousands of pounds.

Machinery used include, but are not limited to:

- Boring mills;
- Cut saws;
- Drills;
- Iron workers;
- Lathes;
- Overhead cranes;
- Welders/cutters.

Some establishments use CNC (computer numeric controlled) machinery; however, most establishments in this classification primarily use manual machinery and conventional welders/cutters.

Work activities include, but are not limited to:

- Electronics assembling;
- Machining;
- Painting;
- Welding;
- Repairing the interior shafts of press rollers;
- Grinding fiberglass or ceramic finishes until they are smooth;
- For rubber-coated press roller surfaces, removing the old rubber from the metal surface, sandblasting the roller, then recoating it with new rubber. Most establishments that recoat the surface with rubber will mix and extrude their own rubber which is included in this

classification when performed by employees of employers subject to this classification.

Special note: In addition to shop work, field work is an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.

Exclusions:

- Manufacture of nonpassenger type vehicles such as semi-trucks is classified in 3605;
- Auto or passenger vehicle manufacturing is classified in 3402;
- Semi-truck repair and service centers are classified in 6409.

5109-47 Heavy arms: Manufacturing or repair

Applies to:

Manufacture or repair of heavy arms including large munitions 20 mm and larger.

Equipment manufactured include, but are not limited to:

- All types of guns 20 mm and larger;
- Aircraft guns;
- Aircraft gun turrets;
- Naval guns;
- Tank guns;
- Torpedoes.

Special note: In addition to shop work, field work is an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5204 Classification 5204.

5204-58 Railroad car: Manufacturing or repair

Railroad car wheel: Manufacturing or repair

~~((Applies to establishments engaged in the manufacture or repair of railroad cars and/or railroad car wheels. This classification includes the repair or rebuilding of freight cars, repair of railroad rolling stock tank cars or passenger cars. Inspections of railroad cars are usually conducted prior to making the repairs. Types of repair include, but are not limited to, electrical, mechanical (such as for brakes), or welding (such as on handrails and steps).))~~

Applies to:

- Businesses engaged in the manufacture or repair of railroad cars and/or railroad car wheels.

Work activities include, but are not limited to:

- Inspecting railroad cars which is usually conducted prior to making repairs;
- Repair or rebuilding of freight cars, repair of railroad rolling stock tank cars or passenger cars;
- Repairing electrical, and mechanical (such as brakes) parts or systems;
- Welding (such as on handrails and steps).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6201 Classification 6201.

6201-00 Mortuaries, funeral homes, crematoriums

~~((Applies to establishments engaged in all operations of a mortuary, funeral home or crematorium. Funeral homes generally provide a complete burial service which includes, but is not limited to, preparing the deceased for cremation or burial (this could include beautician services), providing the casket and burial plot, conducting the funeral service, providing transportation for family of the deceased, and providing flowers. Employments in this classification include drivers, organists, singers and other musicians, embalmers, and crematory employees if they are employed by the funeral home.~~

~~This classification excludes cemetery operations which are to be reported separately in classification 6202.)~~

Applies to:

Businesses engaged in all operations of a mortuary, funeral home, or crematorium.

Funeral homes generally provide a complete burial service.

Occupations include, but are not limited to:

- Crematory employees, if they are employed by the funeral home;
- Drivers;
- Embalmers;
- Organists, singers and other musicians.

Work activities include, but are not limited to:

- Preparing the deceased for cremation or burial (this could include beautician services);
- Providing the casket and burial plot;
- Conducting the funeral service;
- Providing transportation for family of the deceased;
- Providing flowers.

Exclusions:

- Cemetery operations are classified in 6202.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6203 Classification 6203.

6203-00 YMCA/YWCA institutions

~~((Applies to establishments engaged in the operation of a Young Men's or Young Women's Christian or Hebrew Associations. These are in-~~

~~ternational community service organizations which generally respond to the needs of their communities. Typical operations include, but are not limited to, providing temporary residential facilities, swimming and exercise facilities, basketball courts, aerobic and fitness classes, child care, youth sports programs, social and educational programs, and day camp operations. Some facilities will provide a food and beverage service. This classification includes clerical office and sales personnel.~~

~~This classification excludes overnight camp operations which are to be reported separately in classification 6209.~~

~~6203-01 Boys or girls clubs~~

~~Applies to establishments engaged in operating boys or girls clubs. These clubs are nonprofit organizations which provide recreation, cultural enrichment, health and physical education, and personal adjustment services for boys and girls from 6 to 18 years of age. These facilities differ from location to location, but many offer gymnasiums, organized sports programs, day camp operations, game rooms, library or computer rooms, classes and various other supervised activities where young people can spend time. Some facilities also have swimming pools and offer meal programs. This classification includes clerical office and sales personnel.~~

~~This classification excludes overnight camp operations which are to be reported separately in classification 6209.)~~

Applies to:

Businesses engaged in the operation of a Young Men's or Young Women's Christian or Hebrew Associations.

These are international community service organizations which generally respond to the needs of their communities.

Operations include, but are not limited to:

- Aerobic and fitness classes;
- Basketball courts;
- Child care;
- Clerical office;
- Day camp operations;
- Food and beverage operations;
- Providing temporary residential facilities;
- Sales personnel;
- Social and educational programs;
- Swimming and exercise facilities;
- Youth sports programs.

Exclusions:

- Overnight camp operations are classified in 6209.

6203-01 Boys or Girls Clubs

Applies to:

Businesses engaged in operating Boys or Girls Clubs.

These clubs are nonprofit organizations which provide recreation, cultural enrichment, health and physical education, and personal adjustment services for boys and girls from six to 18 years of age.

Operations include, but are not limited to:

- Classes and various other supervised activities where young people can spend time;
- Clerical office;
- Computer rooms;

- Day camp operations;
- Game rooms;
- Gymnasiums;
- Library rooms;
- Meal programs;
- Organized sports programs;
- Sales personnel;
- Swimming pools.

Exclusions:

- Overnight camp operations are classified in 6209.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6402 Classification 6402.

6402-00 Stores: Grocery, N.O.C. - Retail

~~((Applies to establishments engaged in providing retail sale of a full line of grocery items. To qualify for this classification an establishment must provide for retail sale all of the following items: Canned goods, dairy products, a full line of fresh meats, frozen meats, vegetables and fruits, baked goods, carbonated and alcoholic beverages, juices, household cleaners, laundry and health care products. These stores will generally be of the supermarket size but there may be some smaller stores which are also to be included in this classification if all of the items listed above are in their inventory. Also included in this classification, when performed by employees of the store, are in-store departments or services that are provided for the customer's convenience such as in-store bakeries, delis, video rental, film developing, florists, and wine departments.~~

~~This classification excludes in-store pharmacies which are to be reported separately in classification 6406, espresso street carts or stands and lunch counter/restaurant operations which are to be reported separately in classification 3905; convenience store or mini-markets that do not sell all of the above mentioned items which are to be reported separately in classification 6403; grocery or convenience stores with self-service gasoline operations which are to be reported separately without division of hours in classification 3410; and specialty retail stores that sell only dairy products, fruits and vegetables, soft drinks or wine and/or liquor which are to be reported separately in classification 6403.~~

~~**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.))~~

Applies to:

Businesses providing retail sale of a full line of grocery items. To qualify for this classification a business **must** provide for retail sale all of the following items listed below.

These stores will generally be of the supermarket size but there may be some smaller stores which are also to be included in this classification if all of the items listed below are in their inventory. Also included in this classification, when performed by employees of the store, are in-store departments or services that are provided for

the customer's convenience such as in-store bakeries, delis, video rental, film developing, florists, and wine departments.

Products that must be for retail sale include, but are not limited to:

- Baked goods;
- Canned goods;
- Carbonated and alcoholic beverages;
- Dairy products;
- Frozen meats;
- Full line of fresh meats;
- Health care products;
- Household cleaners;
- Juices;
- Laundry products; and
- Vegetables and fruits.

Exclusions:

- In-store pharmacies are classified in 6406;
- Espresso street carts or stands and lunch counter/restaurant operations are classified in 3905;
- Convenience store or mini-markets that do not sell all of the above mentioned items are classified in 6403;
- Grocery or convenience stores with self-service gasoline are classified in 3410; and
- Specialty retail stores that sell only dairy products, fruits and vegetables, soft drinks or wine and/or liquor are classified in 6403.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

WAC 296-17A-6608 Classification 6608.

6608-00 Motion picture production

~~((Applies to establishments engaged in the production of motion pictures. Elaborate sets are often constructed at the production sites and filmed with cameras mounted on large booms. This classification includes all employment such as, but not limited to, staff who design and construct the sets, actors and entertainers, stunt personnel, camera and lighting personnel, musicians, writers, costume designers, make-up artists, film editing, directors, producers, sales personnel, and clerical office employees.~~

~~This classification excludes video taping or production work conducted in a studio or on location for a television broadcasting company which is to be reported separately in classification 4502.)~~

Applies to:

Businesses engaged in the production of motion pictures.

Work activities often include constructing elaborate sets at the production sites and filming with cameras mounted on large booms.

Employments include, but are not limited to:

- Actors and entertainers;
- Camera and lighting personnel;

- Clerical office employees;
- Costume designers;
- Directors;
- Film editors;
- Makeup artists;
- Musicians;
- Producers;
- Sales personnel;
- Set builders;
- Set designers;
- Stunt personnel;
- Writers.

Exclusions:

• Video taping or production work conducted in a studio or on location for a television broadcasting company is classified in 4502.

Special note: Care should be exercised when assigning this classification as the entertainers or musicians may be exempt from coverage as specified in RCW 51.12.020(9).

AMENDATORY SECTION (Amending WSR 16-11-082, filed 5/17/16, effective 7/1/16)

WAC 296-17A-6902 Classification 6902.

6902-02 Logging road: Construction or maintenance

~~((Applies to the construction or maintenance of logging roads. For purposes of this classification logging roads are roads for which the basic use is to provide access into a timber or forest area and for the transporting of logs out of the area by truck. This classification includes roads constructed on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the State Department of Natural Resources or the United States Forest Service timber sales. Logging roads contemplated by this classification are typically cleared and graded with a bulldozer and then paved with gravel, crushed rock, or large stones. Logging roads are generally engineered to support the weight of logging equipment and trucks but not necessarily to handle speeds and volume of nonlogging traffic. As a rule, these roads are not surfaced with asphalt or paved with concrete. Classification 6902 includes log road maintenance which is limited to keeping the road bed in good repair such as regrading and fill to repair washouts and ruts.~~

~~This classification excludes:~~

- ~~The felling of timber, bucking and delimiting of all trees in the proposed roadway or adjacent shoulder and all other logging activities which are to be reported separately in classification 5001;~~
- ~~All excavation, land clearing or grading as a part of roadway construction not in connection with a logging road which is to be reported separately in classification 0101;~~
- ~~Construction of asphalt roads which is to be reported separately in classification 0210;~~
- ~~Construction of concrete roads which is to be reported separately in classification 0214;~~
- ~~Mechanical roadside brushing or machine application of chemicals which is to be reported separately in classification 5006; and~~

~~• Permanent shop or yard operations which are to be reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.~~

~~6902-03 Logging railroad: Construction or maintenance~~

~~Applies to the construction or maintenance of logging railroads. For purposes of this classification logging railroads are side tracks and spurs which feed into existing railroad main lines. Log trucks haul logs from the cutting site to the logging railroad where they are loaded onto the logging railroad cars and transported to the main line. This classification includes railroads constructed on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the State Department of Natural Resources or the United States Forest Service timber sales. The construction includes clearing and grading with use of a bulldozer; laying dirt, rock and ballast; laying ties and track; and installing crossover frogs, switches, switch stands, switch mechanisms and crossing planks as needed. This classification also includes log railroad maintenance which is limited to keeping the railroad line operational.~~

~~This classification excludes:~~

- ~~• The falling of timber, bucking and delimiting of all trees in the proposed roadway or adjacent shoulder, and all other logging activities which are to be reported separately in classification 5001;~~
- ~~• The construction of railroad lines not in connection with a logging railroad which is to be reported separately in classification 0101;~~
- ~~• Construction of logging roads which is to be reported separately in classification 6902-02; and~~
- ~~• Maintenance and storage of equipment and material at a permanent yard or shop which is to be reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.)~~

Applies to:

Construction or maintenance of logging roads. For purposes of this classification logging roads are roads for which the basic use is to provide access into a timber or forest area and for the transporting of logs out of the area by truck.

Work activities include, but are not limited to:

- Constructing roads on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the state department of natural resources or the United States Forest Service timber sales;
- Clearing and grading logging roads with a bulldozer;
- Paving with gravel, crushed rock, or large stones;
- Maintaining logging roads which is limited to keeping the road bed in good repair, such as regrading and fill to repair washouts and ruts.

Note: As a rule, these logging roads are built to support the weight of logging equipment and trucks, but not necessarily to handle speeds and volume of nonlogging traffic. These roads are not surfaced with asphalt or paved with concrete.

Exclusions:

- Felling of timber, bucking, and delimiting of all trees in the proposed roadway or adjacent shoulder and all other logging activities are classified in 5001;
- All excavation, land clearing, or grading as a part of roadway construction not in connection with a logging road is classified in 0101;
- Construction of asphalt roads is classified in 0210;

- Construction of concrete roads is classified in 0214;
- Mechanical roadside brushing or machine application of chemicals is classified in 5006; and
- Worker hours engaged in permanent shop or yard operations is reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.

6902-03 Logging railroad: Construction or maintenance

Applies to:

Construction or maintenance of logging railroads. For purposes of this classification logging railroads are side tracks and spurs which feed into existing railroad main lines.

Work activities include, but are not limited to:

- Constructing railroads on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the state department of natural resources or the United States Forest Service timber sales;
- Clearing and grading with a bulldozer;
- Laying dirt, rock, and ballast;
- Laying ties and track;
- Installing crossover frogs, switches, switch stands, switch mechanisms, and crossing planks as needed; and
- Maintaining logging railroads, which is limited to keeping the railroad line operational.

Exclusions:

- Falling of timber, bucking, and delimiting of all trees in the proposed roadway or adjacent shoulder, and all other logging activities are classified in 5001;
- Construction of railroad lines not in connection with a logging railroad is classified in 0101;
- Construction of logging roads are classified in 6902-02; and
- Worker hours engaged in maintenance and storage of equipment and material at a permanent yard or shop is reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6903 Classification 6903.

6903-03 Aerial spraying, seeding, crop dusting, or firefighting

~~((Applies to the flying crew of establishments engaged in aerial spraying, seeding, crop dusting, and firefighting, which involves the low altitude release of agricultural chemicals, seeds, water, or fire retardant compound.~~

~~This classification excludes aircraft ground crew operations which are to be reported separately in classification 6804.))~~

Applies to:

Flying crew of businesses engaged in aerial spraying, seeding, crop dusting, and firefighting.

Work activities include, but are not limited to:

Flight crew activities for low altitude release of:

- Agricultural chemicals;
- Fire retardant compound;
- Seeds;
- Water.

Exclusions:

- Aircraft ground crew operations are classified in 6804.

OTS-5577.2

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3407 Classification 3407.**3407-00 Gas or oil dealers, wholesale or retail, including fuel oil, propane or butane**

~~((Applies to establishments engaged in the distribution of fuel oil, liquefied petroleum gases (propane and butane) and gasoline on a retail or wholesale basis. Dealers may maintain their own storage tanks on their premises and receive gas or oil through a pipeline from a refinery, by rail or tanker truck, or they may receive their supplies from a separate distribution facility. Gas dealers will deliver gasoline and lubricating oils directly to retail gas stations in large tank trucks. Fuel oil is delivered to customers by pump trucks and pumped into the customer's tank. Liquefied petroleum gases (LPG) is delivered to customers by pump truck or in prefilled cylinders. Some dealers may also provide, through sale or lease, the installation and maintenance of gas appliances which is included in this classification when done by employees of an employer subject to this classification. This classification includes the incidental mixing or blending of oil or gas with additives, the draining, repair, installation or removal of customer's oil tanks, maintenance contracts and emergency repairs.~~

~~This classification excludes the repair, installation or removal of underground oil storage tanks by a contractor which is to be reported separately in classification 0108; the installation or repair of furnaces by a contractor which is to be reported separately in classification 0307; and the construction or repair of exterior commercial storage tanks by a contractor which is to be reported separately in classification 0508.~~

3407-01 Asphalt, bitumen dealers

~~Applies to establishments engaged as dealers of asphalt and bitumen which can be either a by-product of petroleum refining or found in naturally occurring deposits. Dealers may grind and mix the raw asphalt and bitumen with sand, gravel or limestone to produce a mixture which can be suitable for some paving applications or sold to an asphalt paving material manufacturer for further processing. The product is usually not packaged, but sold by the truckload. When this mixing process is conducted in connection with an oil/petroleum refining operation, it is to be reported in classification 3407-03.~~

~~This classification excludes the mining or quarrying of raw materials which is to be reported separately as applicable; establishments engaged in the manufacture of asphalt mixtures for road paving which~~

is to be reported separately in classification 3407-18; and the paving of roads or other surfaces which is to be reported separately in classification 0210 or 0212.

~~3407-02 Processing waste oils, solvents, antifreeze, paints, and similar materials~~

~~Applies to establishments engaged in processing waste oils, used solvents, antifreeze, paints, and similar hazardous materials. Mobile recycling units engaged in similar activities are included in this classification. The processes used by establishments in this classification are similar in that a sample of the waste material usually has been laboratory tested so the composition of the substance is known prior to either being picked up by the establishment's own trucks, or delivered by the customer. Depending on the material and quantity, it may arrive in drums or by tanker trucks. Incoming oil is pumped into waste oil storage tanks where water settles out. After the settling process, the oil goes to treatment tanks where it is heated to boil off remaining water and vaporize gases. There are other methods of recycling the oil, using chemicals, which are also included in this classification. The end product can be used in industrial burners or for cutter fuel. Solvents and antifreeze can be recycled through a distilling process, and used again.~~

~~This classification excludes establishments engaged in hazardous/toxic material processing or handling, not described above, such as processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land — classification 0101), and reprocessing or handling of low-level radioactive materials which are to be reported separately in classification 4305.~~

~~3407-03 Oil refining — Petroleum, including manufacture of products from oil; gasohol — Distilling or refining~~

~~Applies to establishments engaged in the operation of oil refineries. Oil refineries receive crude oil by pipeline, truck or tanker ship, process it into products such as, but not limited to, gasoline, natural gas, kerosene, fuel oil, lubricating oils and asphalt, and distribute it to their customers. Current refining processes involve four basic steps; separation, conversion, treating and blending. These processes are highly automated and involve the use of receiving tanks, processing units, distillation towers, intermediate storage and pipelines. Included within the scope of this classification are any additional processing methods used to produce the finished secondary products. This classification includes the production of gasohol and the preliminary separation of crude oil (called "topping") at a well site by a contractor.~~

~~This classification excludes oil refinery maintenance by a contractor which is to be reported separately in classification 0603; construction of an oil refinery or storage tanks which is to be reported separately in classification 0508; cleaning of storage tanks by a contractor which is to be reported separately in classification 0504; operation of an oil well and incidental preliminary separation of crude oil ("topping") at the well site which is to be reported separately in classification 3407-05; and operation of an oil pipeline only which is to be reported separately in classification 3407-12.~~

~~3407-04 Asphalt or tar — Distilling or refining~~

~~Applies to establishments engaged in the production of commercial asphalt or tar. Products produced in this classification differ from those in 3407-01 in that products in 3407-04 are refined to, and sold~~

as, a liquid or semiliquid. Low grade crude oil, petroleum distillate (by-product of oil refining operations) and coal-tar oil must be treated in a heat exchange system and still before undergoing a final processing in a fractioning tower (a process also used in oil refining) to separate the asphalt or tar. Finished products and by-products include, but are not limited to, asphalt roofing compound, asphalt for use in manufacturing felt roofing paper, trinidad asphalt used in road paving, tar to be used in various paving and waterproofing applications and coal tar which is used in drugs and waterproofing products. When this process is conducted in connection with an oil/petroleum refining operation, it is to be reported in classification 3407-03.

This classification excludes contractors engaged in distillery/refinery maintenance which is to be reported separately in classification 0603; contractors engaged in cleaning of storage tanks which is to be reported separately in classification 0504; and construction of refineries and storage tanks which is to be reported separately in classification 0508.

3407-05 Gas or oil well operation

Applies to establishments or contractors engaged in the routine operation of producing oil or gas wells. Work contemplated by this classification includes, but is not limited to, all routine operation and maintenance required such as, but not limited to, land clearing and excavation to create slush pits, fire walls, pipe laying, machinery and equipment (such as oil, gas or water pumps) installation and operation, preliminary separation of crude oil, and monitoring of oil or gas production when performed by employees of an employer having operations subject to this classification.

This classification excludes derrick or storage tank erection which is to be reported separately in classification 0508; oil well drilling which is to be reported separately in classification 0103; excavation by a contractor which is to be reported separately in classification 0101; pipe laying by a contractor which is to be reported separately in classification 0107; cleaning of storage tanks by a contractor which is to be reported separately in classification 0504; machinery or equipment maintenance by a contractor which is to be reported separately in classification 0603; and the operation of an oil or gas pipeline only which is to be reported separately in classification 3407-12.

3407-07 Oil or gas wells -- Cementing

Applies to establishments engaged in providing cementing services to oil and gas well drilling operations. Cementing is required to fill the space between the outer edge of the hole being drilled and the metal casing which is being installed in segments to line the hole. The mixed cement is pumped, under pressure, down into the casing. When it reaches the bottom of the existing hole, the continuing pressure forces it upward around the outside of the casing to the top of the hole or to where it will meet the last segment to have been cemented. This will serve to keep the casing stable and also to prevent any leakage of oil or gas from the casing into the surrounding soil when the well is operational. Cementing contractors can use the drilling derrick already in place to support their machinery. This classification also includes filling the entire well hole with cement, after the casing is disassembled and removed, when the well is no longer operational.

~~This classification excludes oil or gas well cementing done by employees of an oil well drilling contractor which is to be reported separately in classification 0103.~~

~~3407-12 Oil or gas pipeline operation~~

~~Applies to establishments engaged in operating an oil or gas pipeline. The pipeline may be used to transport crude oil from a well to a refinery or processed oil from a refinery to a remote storage facility or customer. Work contemplated by this classification includes, but is not limited to, operating and maintaining above or below-ground pipelines, feeder and distribution lines, pumping stations to maintain flow, storage facilities, and meters and monitoring equipment. This classification is appropriate whether the pipeline is being operated by the owner or a contractor.~~

~~This classification excludes oil or gas pipeline operations done in connection with an oil refinery which are to be reported in classification 3407-03; oil or gas pipeline operations done in connection with the operation of an oil or gas well which are to be reported in classification 3407-05; contractors engaged in above or below ground pipe installation which is to be reported separately in classification 0107; construction of oil refineries and/or storage tanks which is to be reported separately in classification 0508; and the installation of pumps or monitoring equipment which is to be reported separately in classification 0603.~~

~~3407-17 Asphalt roofing material -- Manufacturing~~

~~Applies to establishments engaged in the manufacture of asphalt mixtures used in the preparation of building or roofing papers and shingles from raw materials purchased from others. The operations may include the incidental distillation of the asphalt flux.~~

~~*Asphalt Roofing Materials* -- Some plants are fully automated, with controls, gauges, and valves housed in a separate room. Liquid asphalt flux, purchased from refineries, is hauled in by tanker trucks owned either by the refineries or the manufacturer, and is pumped directly into "air stills" or into holding tanks. An oxidation process takes place in the air stills. The asphalt flux is heated, then pumped into cooling tanks before it is pumped through pipes to a bulk loading/delivery station or to another area for further use. The processed hot asphalt may also be pumped into a blending tank where it can be blended with mineral spirits or naphtha to produce "cut-back" asphalt which is used in "cold asphalt" applications, or mixed with water to obtain an emulsified asphalt which "sets up" when it cools.~~

~~*Asphalt Impregnated Felt Roofing Paper* -- Large rolls of felt paper are unrolled and automatically fed into a saturation tank where the paper is impregnated with the hot asphalt mixture. The paper then goes through several large rollers for cooling and smoothing, and is finally cut to size and rolled to produce rolls of asphalt coated felt roofing paper ready for use.~~

~~*Asphalt Fiberglass Shingles* -- Limestone is delivered in bulk by suppliers' trucks and blown pneumatically into storage tanks. In the production processes it goes through a heater and is then mixed with the liquid asphalt. The production line starts with huge rolls of fiberglass which are fed continuously (roll ends spliced together automatically) into the process. The asphalt mixture is crushed into both sides of the fiberglass by large rollers and the excess asphalt scraped off. Granules are applied to the top side and sand is applied to the back side of the asphalt coated fiberglass. The coated fiberglass is then run through coolers. Granules are pressed into the coating and~~

the material is fed/hung into "loopers" for additional cooling. After cooling, the coated material is automatically cut into strips, cut to specified width and length, "dragon teeth" (notches) cut, asphalt applied to the back of the "dragon teeth," then the "teeth" applied to the shims, and the asphalt shingle is complete.

This classification excludes asphalt or bitumen dealers who are to be reported separately in classification 3407-01, asphalt or tar distilling or refining operations which are to be reported separately in classification 3407-04, and asphalt paving material manufacturers who are to be reported separately in classification 3407-18.

3407-18 Asphalt paving material - Manufacturing

Applies to establishments engaged in the manufacture of asphalt mixtures used for road paving operations from raw materials purchased from others. This classification applies only to the operation of the asphalt plant which usually consists of a loader, a control operator, and a maintenance worker. (To qualify for classification 3407-18 the maintenance worker's duties must relate only to the asphalt plant.) This classification does not apply to workers involved in pit, crusher and bunker operations. The operations may include the incidental distillation of the asphalt flux which is included in this classification. Asphalt paving mixture plants are usually fully automated and controlled from a central control room overlooking the production area. Sand and gravel may be obtained from the producer's own gravel pit or purchased from independent suppliers. Liquid asphalt is obtained directly from either the refineries or from an asphalt dealer. Suppliers usually deliver raw materials to the manufacturing plant.

In a *batch plant*, each batch is made separately. The stored aggregate is loaded into hoppers, then carried by conveyor through a dust collecting system prior to entering the dryer drum. In the dryer drum the aggregate is dried and heated to specified temperatures before being conveyed to the "batcher" where it is screened, then stored in bins. Heated liquid asphalt is weighed to precise specifications required for that batch. Measured amounts of aggregate and liquid asphalt are in a pug mill to desired state, then discharge into trucks to be delivered to customers or stored in a silo.

In a *drum plant* the mix is continuous with several of the processing steps being combined in the drum. The measured cold aggregate is fed directly into the burner end of the drum for drying and heating. A measured amount of hot oil asphalt is dumped into the drum and mixed with the heated aggregate. The mixed product is conveyed into storage silos where it is held until pumped into delivery trucks.

This classification excludes workers involved in pit, crusher and bunker operations who are to be reported separately in classification 0112; paving contractors who manufacture asphalt paving material for their own use who are to be reported separately in the appropriate construction classifications; asphalt or bitumen dealers who are to be reported separately in classification 3407-01; asphalt or tar distilling or refining operations which are to be reported separately in classification 3407-04; and establishments engaged in the manufacture of asphalt roofing material which are to be reported separately in classification 3407-17.

Special note: If the product is manufactured by paving contractors for sale to the general public, as well as for their own use, and if the employees operating the asphalt plant have no other duties, classification 3407-18 would apply to the asphalt plant employees.

3407-19 Dewatering sludge; advanced recycling of plastics and tires; On-site oil filtering

Applies to establishments engaged in providing mobile dewatering services to waste sludge producers through the use of mobile decanter centrifuges. The centrifuges and control instrumentation is highly specialized equipment designed specifically for the dewatering of sludge to concise quality specifications as determined by the client. Mobile decanter centrifuge installations include dredging and pumping equipment, flocculation systems, and portable electrical supply, as well as trucks for transferring the dewatered sludge. The ultimate disposal of the dewatered sludge is provided by either a subcontractor or by the client. The dewatered sludge can be used in a wide variety of applications such as composting and land reclamation. This classification also applies to establishments engaged in advanced recycling of plastics and tires. The process is similar to a small refinery. Either pelletized or shredded plastic material made from used consumer materials, or shredded used tire material may be used. The plastic or tire material is fed into a retort which decomposes the material using heat without oxygen, so the material is not burned. As the hot vapor gas cools, it is condensed into oil. Oil from the plastic processing is shipped to refineries where it will be refined further into plastic base material. Oil from the chipped tires is usually sold to oil blending companies. This classification also applies to on-site oil filtering. The usual process is filtering the oil through a filtering mechanism and then back into its original tank. This service may be performed on ships, in industrial plants, or at gas or oil storage facilities.

This classification excludes the "rig up/down" process (unloading and setting up the equipment at a new job site, and tearing it down and loading it on trucks to haul it to the next job site) which is to be reported separately in classification 0603.)

Applies to:

Businesses engaged in the distribution of fuel oil, liquefied petroleum gases (propane and butane), and gasoline on a retail or wholesale basis.

Dealers may maintain their own storage tanks on their premises and receive gas or oil through a pipeline from a refinery, by rail or tanker truck, or they may receive their supplies from a separate distribution facility.

Work activities include, but are not limited to:

- Delivering gasoline and lubricating oils directly to retail gas stations in large tank trucks;
- Delivering fuel oil to customers by pump trucks; pumping the fuel oil into the customer's tank;
- Delivering liquefied petroleum gases (LPG) to customers by pump truck or in prefilled cylinders;
- Draining, repairing, installing, or removing of customer's oil tanks;
- Incidental mixing or blending of oil or gas with additives;
- Selling or leasing of gas appliances and maintenance contracts, including installing, maintaining, and emergency repairing of the gas appliances which is included in this classification when done by employees of an employer subject to this classification.

Exclusions:

- Repair, installation, or removal of underground oil storage tanks by a contractor is classified in 0108;
- Installation or repair of furnaces by a contractor is classified in 0307;
- Construction or repair of exterior commercial storage tanks by a contractor is classified in 0508.

3407-02 Processing waste oils, solvents, antifreeze, paints, and similar materials; dewatering sludge; advanced recycling of plastics and tires; on-site oil filtering

Applies to:

- Businesses processing waste oils, used solvents, antifreeze, paints, and similar hazardous materials;
- Businesses providing mobile dewatering services to waste sludge producers through the use of mobile decanter centrifuges;
- Businesses for the advanced recycling of plastics and tires;
- Mobile recycling units engaged in similar activities are included in this classification, whether on ships, in industrial plants, or at gas or oil storage facilities.

Processes include, but are not limited to:

- Sampling the waste material for laboratory testing so the composition of the substance is known prior to pick up and processing;
- Picking up or accepting delivery from customers, which may be in drums or in tanker trucks;
- Pumping incoming oil into waste oil storage tanks where water settles out;
- Heating the oil in treatment tanks to boil off remaining water and vaporize gases;
- Using chemical methods of recycling oil is also included in this classification;
- Recycling solvents and antifreeze through a distilling process for reuse;
- Dewatering sludge to concise quality specifications as determined by the client;
- Advanced recycling of plastics and tires similar in process to a small refinery: Either pelletized or shredded plastic material made from used consumer materials, or shredded used tire material may be used; the plastic or tire material is fed into a retort which decomposes the material using heat without oxygen, so the material is not burned; as the hot vapor gas cools, it is condensed into oil;
- On-site oil filtering, which includes filtering the oil through a filtering mechanism and then back into its original tank.

Products manufactured include, but are not limited to:

- Oil which can be used in industrial burners or for cutter fuel;
- Dewatered sludge can be used in a wide variety of applications such as composting and land reclamation. The ultimate disposal of the dewatered sludge is provided by either a subcontractor or by the client;
- Oil from the plastic processing is shipped to refineries where it will be refined further into plastic base material;
- Oil from the chipped tires is usually sold to oil blending companies.

Equipment used include, but are not limited to:

- Flatbed, tanker, or other specialized trucks;

- Centrifuges and control instrumentation that is highly specialized and designed specifically for the dewatering of sludge;
- Mobile decanter centrifuge installations include dredging and pumping equipment, flocculation systems, and portable electrical supply;
- Filtering systems;
- Retorts - Which decompose the material using heat without oxygen;
- Treatment tanks;
- Waste oil storage tanks.

Exclusions:

- Worker hours unloading and setting up the equipment at a new job site, and tearing it down and loading it on trucks to haul it to the next job site (the "rig up/down" process) must be reported separately in classification 0603;
- Worker hours processing or handling hazardous/toxic material, not described above, such as processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land - Classification 0101), and reprocessing or handling of low-level radioactive materials must be reported separately in classification 4305.

3407-03 Oil refining - Petroleum, including manufacture of products from oil; gasohol - Distilling or refining**Applies to:**

- Businesses operating oil refineries;
- Preliminary separation of crude oil (called "topping") at a well site by a contractor.

Processes include, but are not limited to:

- Receiving crude oil by pipeline, truck, or tanker ship;
 - Refining processes involving four basic steps: Separation, conversion, treating, and blending; these processes are highly automated;
 - Distributing to customers.
- Included within the scope of this classification are any additional processing methods used to produce the finished secondary products.

Equipment used include, but are not limited to:

- Distillation towers;
- Intermediate storage;
- Pipelines;
- Processing units;
- Receiving tanks.

Products manufactured include, but are not limited to:

- Asphalt;
- Fuel oil;
- Gasohol;
- Gasoline;
- Kerosene;
- Lubricating oils;
- Natural gas.

Exclusions:

- Oil refinery maintenance by a contractor is classified in 0603;
- Cleaning of storage tanks by a contractor is classified in 0504;

• Operation of an oil well or pipeline, and incidental preliminary separation of crude oil ("topping") at the well site is classified in 3407-05;

• Worker hours constructing an oil refinery or storage tanks must be reported separately in classification 0508.

3407-05 Gas or oil well operation; oil or gas pipeline operation

Applies to:

Businesses operating oil or gas wells or pipelines, whether operated by the owner or a contractor.

Pipelines may be used to transport crude oil from a well to a refinery, or processed oil from a refinery to a remote storage facility or customer.

Work activities include, but are not limited to:

• Land clearing and excavation to create slush pits and fire walls;

• Pipe laying;

• Equipment installation and operation;

• Preliminary separation of crude oil;

• All routine operation and maintenance for wells, above and below ground pipelines, feeder and distribution lines, pumping stations, storage facilities, meters, and monitoring equipment;

• Monitoring of oil or gas production when performed by employees of an employer having operations subject to this classification.

Equipment used include, but are not limited to:

• Meters and monitoring equipment;

• Oil, gas, and water pumps.

Exclusions:

• Oil or gas pipeline operations in connection with an oil refinery is classified in 3407-03;

• Derrick, storage tank, or oil refinery construction is classified in 0508;

• Oil well drilling is classified in 0103;

• Excavation by a contractor is classified in 0101;

• Pipe laying by a contractor is classified in 0107;

• Cleaning of storage tanks by a contractor is classified in 0504;

• Machinery or equipment maintenance by a contractor is classified in 0603;

• Above or below ground pipe installation by contractors is classified in 0107;

• Worker hours installing pumps or monitoring equipment must be reported separately in classification 0603.

3407-07 Oil or gas wells - Cementing

Applies to:

Businesses providing cementing services to oil and gas well drilling operations.

Cementing is required to fill the space between the outer edge of the hole being drilled and the metal casing which is being installed in segments to line the hole.

Work activities include, but are not limited to:

• Pumping mixed cement, under pressure, down into the casing.

When it reaches the bottom of the existing hole, the continuing pressure forces it upward around the outside of the casing to the top of

the hole or to where it will meet the last segment to have been cemented. This will serve to keep the casing stable and also to prevent any leakage of oil or gas from the casing into the surrounding soil when the well is operational;

- Cementing contractors can use the drilling derrick already in place to support their machinery;

- Filling the entire well hole with cement, after the casing is disassembled and removed, when the well is no longer operational.

Exclusions:

- Oil or gas well cementing done by employees of an oil well drilling contractor is classified in 0103.

3407-17 Asphalt, bitumen dealers; asphalt or tar - Distilling or refining; asphalt roofing material - Manufacturing; asphalt paving material - Manufacturing

Applies to:

- Businesses producing commercial asphalt or tar;
- Businesses manufacturing asphalt mixtures used in the preparation of building or roofing papers and shingles from raw materials purchased from others;
- Businesses manufacturing asphalt mixtures used for road paving operations from raw materials purchased from others;
- Businesses operating as dealers of asphalt and bitumen which can be either a by-product of petroleum refining or found in naturally occurring deposits.

Work activities include, but are not limited to:

- Refining asphalt or tar to a liquid or semiliquid;
- Separating the asphalt or tar - Low grade crude oil, petroleum distillate (by-product of oil refining operations) and coal-tar oil must be treated in a heat exchange system and still before undergoing a final processing in a fractioning tower (a process also used in oil refining);
- Incidental distillation of asphalt flux;
- Grinding and mixing raw asphalt and bitumen with sand, gravel, or limestone;
- Manufacturing asphalt roofing materials - Some plants are fully automated, with controls, gauges, and valves housed in a separate room. Liquid asphalt flux, purchased from refineries, is hauled in by tanker trucks owned either by the refineries or the manufacturer, and is pumped directly into "air stills" or into holding tanks. An oxidation process takes place in the air stills. The asphalt flux is heated, then pumped into cooling tanks before it is pumped through pipes to a bulk loading/delivery station or to another area for further use. The processed hot asphalt may also be pumped into a blending tank where it can be blended with mineral spirits or naphtha to produce "cut-back" asphalt which is used in "cold asphalt" applications, or mixed with water to obtain an emulsified asphalt which "sets up" when it cools;
- Manufacturing asphalt impregnated felt roofing paper - Large rolls of felt paper are unrolled and automatically fed into a saturation tank where the paper is impregnated with the hot asphalt mixture. The paper then goes through several large rollers for cooling and smoothing, and is finally cut to size and rolled to produce rolls of asphalt coated felt roofing paper ready for use;
- Manufacturing asphalt fiberglass shingles - Limestone is delivered in bulk by suppliers' trucks and blown pneumatically into storage

tanks. In the production processes it goes through a heater and is then mixed with the liquid asphalt. The production line starts with huge rolls of fiberglass which are fed continuously (roll ends spliced together automatically) into the process. The asphalt mixture is crushed into both sides of the fiberglass by large rollers and the excess asphalt scraped off. Granules are applied to the top side and sand is applied to the back side of the asphalt coated fiberglass. The coated fiberglass is then run through coolers. Granules are pressed into the coating and the material is fed/hung into "loopers" for additional cooling. After cooling, the coated material is automatically cut into strips, cut to specified width and length, "dragon teeth" (notches) cut, asphalt applied to the back of the "dragon teeth," then the "teeth" applied to the shims, and the asphalt shingle is complete;

- Manufacturing asphalt paving mixture - Plants are usually fully automated and controlled from a central control room overlooking the production area. Sand and gravel may be obtained from the producer's own gravel pit or purchased from independent suppliers. Liquid asphalt is obtained directly from either the refineries or from an asphalt dealer. Suppliers usually deliver raw materials to the manufacturing plant.

In a batch plant, each batch is made separately. The stored aggregate is loaded into hoppers, then carried by conveyor through a dust collecting system prior to entering the dryer drum. In the dryer drum the aggregate is dried and heated to specified temperatures before being conveyed to the "batcher" where it is screened, then stored in bins. Heated liquid asphalt is weighed to precise specifications required for that batch. Measured amounts of aggregate and liquid asphalt are in a pug mill to desired state, then discharge into trucks to be delivered to customers or stored in a silo.

In a drum plant, the mix is continuous with several of the processing steps being combined in the drum. The measured cold aggregate is fed directly into the burner end of the drum for drying and heating. A measured amount of hot oil asphalt is dumped into the drum and mixed with the heated aggregate. The mixed product is conveyed into storage silos where it is held until pumped into delivery trucks.

Products manufactured include, but are not limited to:

- Asphalt or asphalt mixture used for paving applications or sold to an asphalt paving material manufacturer for further processing;
- Asphalt fiberglass shingles;
- Asphalt impregnated felt roofing paper;
- Asphalt roofing compound;
- Asphalt used in manufacturing felt roofing paper;
- Coal tar which is used in drugs and waterproofing products;
- Tar to be used in various paving and waterproofing applications.

Products are usually not packaged, but sold by the truckload.

Exclusions:

- Operations conducted in connection with an oil/petroleum refinery are classified in 3407-03;
- Distillery/refinery maintenance by contractors is classified in 0603;
- Cleaning of storage tanks by contractors is classified in 0504;
- Paving of roads or other surfaces is classified in 0210 or 0212;
- Mining or quarrying of raw materials which is to be reported separately as applicable;

• Constructing oil refineries and/or storage tanks is classified in 0508;

• Paving or roofing contractors who manufacture asphalt paving or roofing material for their own use must be reported separately in the appropriate construction classifications.

Special note: If the product is manufactured by paving or roofing contractors for sale to the general public, as well as for their own use, and if the employees operating the asphalt plant have no other duties, classification 3407-17 would apply to the asphalt plant employees.

AMENDATORY SECTION (Amending WSR 15-02-060, filed 1/6/15, effective 7/1/15)

WAC 296-17A-4804 Classification 4804.

~~((4804-00 Farms: Poultry~~

~~**Applies to:**~~

~~Establishments engaged in operating poultry farms of all types.~~

~~**Work in this classification includes,** but is not limited to:~~

~~• Breeding and raising birds for human consumption or for sale for research, laboratories or egg production farms;~~

~~• Sheltering;~~

~~• Tending;~~

~~• Feeding and watering birds;~~

~~• Raising crops for feed;~~

~~• Erecting or mending fences, cages and pens;~~

~~• Breeding birds;~~

~~• Cleaning pens and cages;~~

~~• Transporting animals to market;~~

~~• Maintaining or installing sprinkler or irrigation systems.~~

~~**What activities are not included in this classification?**~~

~~• Feed milling operations (report in classification 2101);~~

~~• Butchering and processing of poultry (report in classification 3304); and~~

~~• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to work being performed).~~

~~**What is a farm labor contractor?**~~

~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and~~

~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

~~**What risk classification are farm labor contractors to report in?**~~

~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~

~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

4804-03 Farms: Egg production

Applies to:

~~Establishments engaged in operating egg production farms.~~

~~**Work in this classification includes**, but is not limited to:~~

~~• Raising brood stock for future egg production or sale to other farms;~~

- ~~• Sheltering;~~
- ~~• Tending;~~
- ~~• Feeding and watering birds;~~
- ~~• Raising crops for feed;~~
- ~~• Erecting or mending fences, cages and pens;~~
- ~~• Breeding birds;~~
- ~~• Cleaning pens and cages;~~
- ~~• Related packing or grading of eggs;~~
- ~~• Transporting eggs to market;~~
- ~~• Maintaining or installing sprinkler or irrigation systems.~~

~~**Notes:**~~

~~• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.~~

~~• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.~~

~~**What activities are not included in this classification?**~~

- ~~• Feed milling operations (report in classification 2101);~~
- ~~• Butchering and processing of poultry (report in classification 3304); and~~
- ~~• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to work being performed).~~

~~**What is a farm labor contractor?**~~

- ~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and~~
- ~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

~~**What risk classification are farm labor contractors to report in?**~~

- ~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~
- ~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

4804-05 Farms: Fur bearing animals

Applies to:

~~Establishments engaged in raising fur bearing animals for pelts (skins) or for sale.~~

~~**Work in this classification includes**, but is not limited to:~~

- ~~• Sheltering;~~
- ~~• Tending;~~
- ~~• Breeding;~~
- ~~• Feeding;~~
- ~~• Killing animals;~~
- ~~• Fleshing and drying skins;~~
- ~~• Erecting or mending fences;~~

- Erecting, maintaining and cleaning kennels or cages;
- Veterinary care when performed by employees of an employer subject to this classification.

Typical animals:

Chinchilla
Fox

Mink

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as feeding animals, grooming, and cleaning kennels; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-06 Farms: Worm**Applies to:**

Establishments engaged in raising worms.

Work in this classification includes, but is not limited to:

- Preparation of soils and soil mixes;
- Maintaining proper soil moisture to encourage worm growth and reproduction;
- Digging worms;
- Sorting and packaging.

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-07 Farms: Apiaries (bees)**Applies to:**

~~Establishments engaged in raising honey bees for making honey, or for sale to growers or farmers who use them as pollinators, or to laboratories or research centers. Also included is collection of bees and bee hives from unrelated properties, and raising of insects such as crickets.~~

~~**Work in this classification includes**, but is not limited to:~~

- ~~• Sheltering;~~
- ~~• Building structures to accommodate bee hives;~~
- ~~• Collecting honey from hives;~~
- ~~• Growing vegetation and plants to support the production of honey or population of bees;~~
- ~~• Processing and packaging of honey, honey comb and bees wax.~~

~~**Notes:**~~

- ~~• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.~~
- ~~• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.~~

~~**What activities are not included in this classification?**~~

- ~~• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).~~

~~**What is a farm labor contractor?**~~

- ~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as collecting hives or bees, preparing soils for crops, irrigating and fertilizing; and~~
- ~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

~~**What risk classification are farm labor contractors to report in?**~~

- ~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~
- ~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

~~**4804-08: Aviaries (birds)**~~

~~**Applies to:**~~

~~Establishments engaged in raising and selling all varieties of birds including game birds and exotic birds.~~

~~**Work in this classification includes**, but is not limited to:~~

- ~~• Sheltering;~~
- ~~• Tending;~~
- ~~• Feeding and watering;~~
- ~~• Raising crops for feed or protective covering;~~
- ~~• Erecting or mending fences, cages, coops, and pens;~~
- ~~• Breeding birds;~~
- ~~• Cleaning pens, cages, and coops;~~
- ~~• Transporting birds to market;~~
- ~~• Maintaining or installing sprinkler or irrigation systems;~~
- ~~• Store operations.~~

~~**Typical birds:**~~

Game-birds

Ostrich

Emu

~~What activities are not included in this classification?~~

~~• Feed milling operations (report in classification 2101); and~~
~~• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).~~

~~What is a farm labor contractor?~~

~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as cleaning pens, weeding, planting, irrigating and fertilizing; and~~
~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

~~What risk classification are farm labor contractors to report in?~~

~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~
~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

~~4804-09 Egg grading, candling and packing~~**~~Applies to:~~**

~~Establishments engaged in grading, candling, and packing eggs for retail or wholesale markets.~~

~~Work in this rate classification includes, but is not limited to:~~

- ~~• Sorting;~~
- ~~• Grading;~~
- ~~• Washing;~~
- ~~• Candling;~~
- ~~• Packing eggs into cartons or crates;~~
- ~~• Transporting eggs to market;~~
- ~~• Store operations located at or near packaging facility.~~

~~What activities are not included in this classification?~~

~~• Establishments engaged in egg breaking (report in classification 3902).~~

~~Special note:~~

~~• Establishments assigned to this classification are not engaged in raising poultry or operating egg production farms.~~
~~• The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.)~~

4804-00 Farms: Poultry, aviaries (birds), and fur bearing animals**Applies to:**

• Businesses engage in poultry farms operations, breeding and raising birds for human consumption, for sale, for research laboratories, or for egg production farms.

• Businesses engaged in raising fur-bearing animals for pelts (skins) or for sale.

• Businesses engaged in raising and selling all varieties of birds including game birds and exotic birds.

Typical animals:ChickensChinchilla

DucksEmuFoxGame birdsGeeseMinkOstrichTurkeys**Work in this classification includes, but is not limited to:**

- Breeding;
- Sheltering;
- Tending;
- Feeding and watering;
- Raising crops for feed or protective covering;
- Erecting or mending fences, cages, coops, kennels, and pens;
- Cleaning cages, coops, kennels, or pens;
- Transporting animals to market;
- Maintaining or installing sprinkler or irrigation systems;
- Killing animals;
- Fleshing and drying skins;
- Veterinary care when performed by employees of an employer subject to this classification.

Store operations:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as, but not limited to, those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

Exclusions:

- Feed milling operations are classified in 2101;
- Businesses engaged in butchering and processing of poultry are classified in 3304;
- Contractors hired by a farm to install, repair or build any farm equipment or structures are classified in the classification applicable to work being performed.

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating, and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-03 Farms: Egg production**Applies to:**

Businesses operating egg production farms.

Work in this classification includes, but is not limited to:

- Raising brood stock for future egg production or sale to other farms;
- Sheltering;
- Tending;
- Feeding and watering birds;
- Raising crops for feed;
- Erecting or mending fences, cages and pens;
- Breeding birds;
- Cleaning pens and cages;
- Related packing or grading of eggs;
- Transporting eggs to market;
- Maintaining or installing sprinkler or irrigation systems.

Store operations:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as, but not limited to, those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

Exclusions:

- Feed milling operations are classified in 2101;
- Businesses engaged in butchering and processing of poultry are classified in 3304;
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating, and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-07 Farms: Apiaries (bees), worms, and insects**Applies to:**

- Businesses raising honey bees for making honey, for sale to growers or farmers who use them as pollinators, or for laboratories or research centers.
- Businesses raising insects, such as crickets.
- Businesses raising worms.

Work in this classification includes, but is not limited to:

- Sheltering;
- Building structures to accommodate bee hives;

- Collecting honey from farm hives;
- Collecting bees and bee hives from unrelated properties;
- Growing vegetation and plants to support the production of honey or population of bees, worms, or insects;
- Processing and packaging of honey, honeycomb and bees wax;
- Preparation of soils and soil mixes;
- Maintaining proper soil moisture to encourage worm growth and reproduction;
- Digging worms;
- Sorting and packaging.

Store operations:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as, but not limited to, those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

Exclusions:

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as collecting hives or bees, preparing soils for crops, irrigating, and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-09 Egg grading, candling and packing

Applies to:

Businesses engaged in grading, candling, and packing eggs for retail or wholesale markets.

Work in this rate classification includes, but is not limited to:

- Sorting;
- Grading;
- Washing;
- Candling;
- Packing eggs into cartons or crates;
- Transporting eggs to market;
- Store operations located at or near packaging facility.

Exclusions:

- Businesses engaged in egg breaking are classified in 3902.

• Businesses engaged in raising poultry are classified in 4804-00.

• Businesses engaged in operating egg production farms are classified in 4804-03.

Special note: The farm labor contractor provision is not applicable to this classification as these establishments are not engaged in a farming operation.

AMENDATORY SECTION (Amending WSR 23-23-155, filed 11/21/23, effective 1/1/24)

WAC 296-17A-6121 Classification 6121.

6121-00 Acute care hospitals - Without a fully implemented safe patient handling program (to be assigned only by the hospital underwriter)

Applies to establishments that meet the definition of an acute care hospital contained in WAC 296-17-35203(7) but that are not using the required patient lifting and moving equipment as part of a fully implemented safe patient handling program as defined in WAC 296-17-35203 (7)(c). This classification contemplates all necessary and usual employments found in hospitals including, but not limited to, admissions, clerical, and sales staff, medical professionals, pharmacy staff, dietitians and food preparation staff, and laundry, housekeeping, custodial and grounds keeping staff.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

WAC 296-17A-6501 Classification 6501.

Barbers, salons, tattoo shops

~~((Establishments in this classification offer personal grooming and beautification services for their customers. These businesses frequently advertise as a day spa but they do **not** operate baths, soaking pools, or steam rooms. Employers in this classification offer the following types of services:~~

- ~~• Barber;~~
- ~~• Beauty salon — Cosmetology;~~
- ~~— Hair styling;~~
- ~~— Hair removal, electrolysis, laser, threading, waxing;~~
- ~~— Manicure, pedicure;~~
- ~~— Esthetician services, facials, skin care, body scrubs;~~
- ~~— Tanning.~~
- ~~• Tattoo shop;~~
- ~~— Body art;~~
- ~~— Body piercing;~~
- ~~— Permanent cosmetics;~~
- ~~— Tattooing.~~

~~When a business provides multiple services listed above and also offers services such as massage or body wraps, these services are included in classification 6501. Barber and beauty services may also be~~

performed at a customer's home or in hospitals. This classification includes clerical office and sales employees of the business.

Excluded from this classification are:

- ~~Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.~~

- ~~Massage therapy, foot massage, or reflexology businesses that are assigned classification 6109.~~

Note: ~~Salons in this classification often operate by renting or leasing a booth or station to licensed individuals who are booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW. A booth renter pays a fee for the use of the shop's facility, receives no compensation from the owner, and performs services in the shop, but is not an employee of the shop owner and are exempt from coverage per RCW 51.12.020. These individuals may elect owner coverage.~~

For administrative purposes, classification 6501 is divided into the following subclassifications:

~~6501-00 Barber shops~~

~~6501-01 Beauty, tanning, and nail salons~~

~~6501-02 Tattoo, piercing shops.))~~

6501-00 Barber shops

Applies to:

Businesses engaged in barber services for customers. Barber services may be performed in a barber shop, at a customer's home, or in other environments such as hospitals. This classification includes clerical office and sales employees of the business.

Services offered may include, but are not limited to:

- Hair cutting;
- Hair removal using electrolysis, lasers, threading, shaving, or waxing;
- Hair styling.

Exclusions:

- Massage therapy, foot massage, or reflexology businesses are classified in 6109;
- Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.

Note: Businesses in this classification often operate by renting or leasing a booth or station to licensed individuals who are booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW. A booth renter pays a fee for the use of the shop's facility, receives no compensation from the owner, and performs services in the shop, but is not an employee of the shop owner and are exempt from coverage per RCW 51.12.020. These individuals may elect owner coverage.

6501-01 Beauty, tanning, and nail salons

Applies to:

- Businesses engaged in beauty salon services.
- Businesses engaged in nail salon services.
- Tanning salon businesses.

Beauty and nail services may be performed in a shop, at a customer's home, or in other environments such as hospitals. This classification includes clerical office and sales employees of the business.

Services offered may include, but are not limited to:

- Esthetician services such as facials, skin care, or body scrubs;

- Hair cutting;
- Hair removal using electrolysis, lasers, threading, shaving, or waxing;
- Hair styling;
- Manicures;
- Pedicures;
- Tanning.

When a business provides multiple services listed above and also offers services such as massage or body wraps, these services are included in classification 6501.

Exclusions:

- Massage therapy, foot massage, or reflexology businesses are classified in 6109;
- Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.

Note: Salons in this classification often operate by renting or leasing a booth or station to licensed individuals who are booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW. A booth renter pays a fee for the use of the shop's facility, receives no compensation from the owner, and performs services in the shop, but is not an employee of the shop owner and are exempt from coverage per RCW 51.12.020. These individuals may elect owner coverage.

6501-02 Tattoo, piercing shops

Applies to:

Businesses engaged in providing tattooing services. Tattoo services may be performed in a shop or in other environments such as tattoo show or conventions. This classification includes clerical office and sales employees of the business.

Services offered may include, but are not limited to:

- Body art;
- Body piercing;
- Permanent cosmetics;
- Tattoo design;
- Tattooing.

When a business provides multiple services listed above and also offers services such as massage or body wraps, these services are included in classification 6501.

Exclusions:

- Massage therapy, foot massage, or reflexology businesses are classified in 6109;
- Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.

Note: While salons in classification 6501 often operate by renting or leasing a booth or station to licensed individuals who are booth renters, tattooists and piercers are not booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-6506 Classification 6506.

6506-00 Photography studios

~~((Applies to establishments engaged in the operation of photography studios. Photographers use a wide range of still and motion cameras; services include both sitting portraits and motion pictures of~~

special events, and are photographed in the studio or at outside locations. Photographers may develop and print photographs in their own studio darkrooms, or they may contract out to an independent photo finishing shop. Studios may also offer services such as retouching negatives, restoration work, mounting and framing pictures, and enlarging photographs. This classification includes glamour and boudoir photography studios which often have a salon where clients have their hair styled and make-up applied. This classification also includes booths, usually located in malls, that will produce photography novelty items such as, but not limited to, cups, shirts and calendars from photographs. Photographs may be taken on location or the customer may bring a picture or negative in to have the image applied to the particular item. Video taping services performed in connection with photography studios is included in this classification.

This classification excludes delivery drivers who are to be reported separately in classification 1101; and establishments engaged in video taping services not in connection with photography studio operations which are to be reported separately in classification 6303.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6506-01 Film processing shops

Applies to establishments engaged in processing film. Operations include, but are not limited to, processing film, reproducing negatives, prints or slides, enlarging pictures, mounting and finishing, storing and mixing chemicals, and inspecting and packaging finished products. Finishing processes may be manual or automated. These shops may offer retail type film developing services to commercial laboratories that provide mass film developing and/or one-hour processing services.

This classification excludes delivery drivers who are to be reported separately in classification 1101.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6506-02 Motion picture film exchanges

Applies to establishments engaged in the operation of motion picture film exchanges. These exchanges receive fully processed movie films from producers, which they catalogue and store for subsequent rental or sale to commercial movie theaters, television networks, or other groups. Film exchanges have a projection room where customers may view the film before they book it. When rented films are returned, they are inspected and repaired as necessary. Repair usually consists of cutting out damaged section and splicing the film with special adhesive and pressure.

This classification excludes delivery drivers who are to be reported separately in classification 1101 and video rental stores which are to be reported separately in classification 6411.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6506-03 Microfilming

Applies to establishments engaged in providing microfilming services for others. Microfilming reproduces and preserves documents onto film in greatly reduced sizes to allow the storage of information in

less space. Documents are photographed; the film is developed in automatic processing units, then stored on reels or cartridges or cut into microfiche. Establishments subject to this classification usually offer related services such as, but not limited to, advice on setting up micrographic systems, the sale or rental of supplies or equipment, storage facilities, keypunch services, film restoration, and/or the destruction of source materials.

This classification excludes drivers who are to be reported separately in classification 1101.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.))

Applies to:

- Businesses operating photography studios, including glamour and boudoir photography studios which often have a salon where clients have their hair styled and make-up applied;
- Businesses operating booths, usually located in malls, which will produce photography novelty items from photographs taken on location or from customers' photographs or negatives.

Services include, but are not limited to:

- Production of novelty items such as calendars, cups, shirts;
- Photographs taken in the studio or at outside locations;
- Sitting portraits;
- Video of special events performed by photography studios.

Work activities include, but are not limited to:

- Contracting work out to an independent photo finishing shop;
- Developing and printing of photographs in the studio darkroom;
- Enlarging photographs;
- Mounting and framing pictures;
- Restoration work;
- Retouching negatives;
- Using a wide range of still and motion cameras.

Exclusions:

- Worker hours for delivery drivers must be reported separately in classification 1101;
- Videotaping not in connection with photography studio operations is classified in 6303.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6506-03 Microfilming, film processing shops, and motion picture film exchanges

Applies to:

- Businesses providing microfilming services for others. Microfilming reproduces and preserves documents onto film in greatly reduced sizes to allow the storage of information in less space;
- Businesses processing photography film;
- Businesses operating motion picture film exchanges.

Work activities include, but are not limited to:

- Photographing documents;
- Developing microfilm in automatic processing units;
- Storing the microfilm on reels or cartridges;
- Cutting the microfilm into microfiche;

- Destroying of source materials;
- Providing storage facilities for microfiche;
- Advising customers on setting up micrographic systems;
- Sale or rental of microfilming supplies or equipment;
- Restoring microfilm;
- Keypunching services, which transcribe data onto punched tape media;
- Processing film, whether manual or automated, for commercial labs or direct to the consumer;
- Enlarging pictures;
- Mounting and finishing pictures;
- Reproducing negatives, prints, or slides;
- Storing and mixing chemicals;
- Inspecting and packaging finished products;
- Receiving fully processed movies from producers;
- Cataloging and storing movies for rental or sale to commercial movie theaters, television networks, or other groups;
- Inspection and repair of movie film, including cutting and splicing;
- Using a projection room for customers to view the movie before they book it.

Exclusions:

- Worker hours for delivery drivers must be reported separately in classification 1101;
- Video rental stores are classified in 6411.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

AMENDATORY SECTION (Amending WSR 18-11-113, filed 5/22/18, effective 7/1/18)

WAC 296-17A-6705 Classification 6705.

6705-00 Ski facilities

~~((Applies to establishments engaged in operating facilities for all types of skiing such as downhill or cross country. Work contemplated by this classification includes, but is not limited to, parking attendants, operation of artificial snow making machines, ski tows and lifts, ski patrols, ski instruction, conducting excursions, trail grooming, and snow compacting when performed by employees of an employer subject to this classification. This classification also applies to establishments that operate facilities for other similar recreational activities such as snow tubing, windboard sailing, and snowmobiling.~~

~~This classification excludes ski rental and sales operations which are to be reported separately in classification 6406; overnight lodging facilities which are to be reported separately in classification 4905; food and beverage services which are to be reported separately in classification 3905; ski instructors who are to be reported separately in classification 6705-04 and ticket sales and collection personnel who work exclusively in an office environment or ticket sales booth and have no other duties in or about the employer's premises who may be reported separately in classification 4904.~~

6705-03 Excursions -- Outdoor recreational, N.O.C.

~~Applies to establishments engaged in providing outdoor recreational excursions and guide services that are not covered by another classification (N.O.C.). Outdoor excursions include, but are not limited to, fishing, hunting, hiking, horseback riding, backpacking, mountain climbing, camping, river rides, white water rafting, and teaching survival skills. Employees of employers subject to this classification will routinely include course instructors and guides who conduct excursions. Work contemplated by this classification may include, but not be limited to, accompanying customers on excursions, teaching first aid, survival skills, hygiene, navigation and other courses in connection with outdoor activities, and maintaining equipment.~~

~~This classification excludes snow skiing excursions or wind board sailing instruction which are to be reported separately in classification 6705-04.~~

6705-04 Ski instructors

~~Applies to establishments who are engaged in providing instruction only in snow/water skiing, surf boarding, sailing and wind sail boarding. Work contemplated by this classification includes, but is not limited to, providing appropriate equipment (skis, snowboards, canoes, etc.) maintaining the equipment, and teaching the technique. This classification excludes establishments that provide the full scope of ski resort services, with or without ski instructors, which are to be reported separately in classification 6705-00 subject to all appropriate exclusions, and the operation of any other full service resort or campground, with or without instructors, which is to be reported separately as applicable.~~

6705-05 Ski patrols

~~Applies to establishments engaged in providing *ski patrolling services only*. Work contemplated by this classification includes, but is not limited to, routine surveillance of a ski facility to ensure safe conditions and sufficient snow cover, encouraging safe use of the facility by patrons, and conducting search and rescue for lost or injured skiers either by contract with a ski resort or on an on-call basis in an emergency. This classification excludes establishments that provide the full scope of ski resort services, with or without a ski patrol, which are to be reported separately in classification 6705-00.)~~

Applies to:

- Businesses operating facilities for:
 - Skiing such as downhill or cross country;
 - Snow tubing;
 - Snowmobiling; and
 - Wind board sailing.
- Businesses providing ski patrolling services.

Work activities include, but are not limited to:

- Conducting excursions;
- Operating artificial snow making machines, ski tows or lifts;
- Parking attendants;
- Snow compacting;
- Ski instruction;
- Ski patrolling; and
- Trail grooming.

Exclusions:

- Food and beverage services are classified in 3905;
- Ski instructors operating independent of the ski facility are classified in 6705-04;
- Ski rental and sales operations are classified in 6406;
- Overnight lodging facilities are classified in 4905;
- Ticket sales and collection personnel who work exclusively in an office environment or ticket sales booth and have no other duties in or about the employer's premises may be classified in 4904.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

6705-03 Excursions - Outdoor recreational, N.O.C.

Applies to:

Businesses providing outdoor recreational excursions and guide services that are not covered by another classification (N.O.C.).

Work activities include, but are not limited to:

- Accompanying and guiding customers on excursions;
- Maintaining equipment;
- Providing course instruction; and
- Teaching first aid, survival skills, hygiene, navigation, and other courses in connection with outdoor activities.

Types of outdoor excursions include, but are not limited to:

- Backpacking;
- Camping;
- Fishing;
- Hiking;
- Horseback riding;
- Hunting;
- Mountain climbing;
- River rides;
- White water rafting; and
- Teaching survival skills.

Exclusions:

Snow skiing excursions or wind board sailing instruction are classified in 6705-04.

6705-04 Ski instructors

Applies to:

Businesses providing instruction only in snow/water skiing, surf boarding, sailing and wind sail boarding.

Work activities include, but are not limited to:

- Maintaining equipment;
- Providing appropriate equipment (skis, snowboards, canoes, etc.); and
- Teaching the technique.

Exclusions:

Businesses that provide the full scope ski resort services, with or without ski instructors, are classified in 6705-00 subject to all appropriate exclusions; and

- Full service resorts or campgrounds, with or without instructors, are reported separately as applicable.

WSR 24-17-130
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed August 20, 2024, 11:50 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Hearing Location(s): On September 26, 2024, at 8:45 a.m. Join Zoom meeting <https://us02web.zoom.us/j/9128500665?pwd=dGhUdnU2Q0gzdHQxbTNTM0lNblMUT09>, Meeting ID 912 850 0665, Passcode 1904; or call in 888 788 0099 US Toll-free; or in person at the Puget Sound Clean Air Agency (agency), 1904 3rd Avenue, Suite 105, Seattle, WA.

Date of Intended Adoption: September 26, 2024.

Submit Written Comments to: Betsy Wheelock, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email RegUpdates@psccleanair.gov, fax 206-343-7522, beginning August 26, 2024, 8:00 a.m., by September 25, 2024, 4:30 p.m.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-343-8800, fax 206-343-7522, email RegUpdates@psccleanair.gov, by September 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Section 3.11:** The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70A.15.3160 (formerly RCW 70.94.431) and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The consumer price index (CPI) for the Seattle/Tacoma/Bellevue area increased by 4.29 percent for the 2023 calendar year, which amounts to an increase of \$1,041.00 in the maximum civil penalty amount. The agency has used CPI for wage earners (CPI-W) in the Puget Sound region for many years to make this inflation-based adjustment because it reflects the data of what happened (i.e., not a forecast) and it represents local economic information.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25: This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2023. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2024.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: John Dawson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4060; Implementation and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70A.15.2040.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and 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 statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

Scope of exemption for rule proposal:

Is fully exempt.

August 19, 2024
Christine Cooley
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70A.15 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$((~~24,273.00~~)) 25,314.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70A.15 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((~~24,273.00~~)) 25,314.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

- (1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;
- (2) A copy of the Notice and Order of Civil Penalty involved;
- (3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;
- (4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;
- (5) The relief sought, including the specific nature and extent; and
- (6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

- (1) 30 days after receipt of the notice imposing the penalty;
- (2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or
- (3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I, SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ((2023)) 2024.

WSR 24-17-131

PROPOSED RULES

HIGHLINE COLLEGE

[Filed August 20, 2024, 12:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-103.

Title of Rule and Other Identifying Information: Highline College updated sex-based discrimination policy in student conduct code to be compliant with federal Title IX regulations.

Hearing Location(s): On October 3, 2024, at 2:00 p.m., via Zoom <https://highline.zoom.us/j/88056919070>. Located virtually for accessibility.

Date of Intended Adoption: October 4, 2024.

Submit Written Comments to: Isabelle Wroblewski, 2400 South 240th, Des Moines, WA 98198-9800, email iwroblewski@highline.edu, fax 206-870-3773, 206-592-3354, beginning August 21, 2024, by October 3, 2024.

Assistance for Persons with Disabilities: Contact Isabelle Wroblewski, phone 206-592-3354, fax 206-870-3773, email iwroblewski@highline.edu, by September 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with federal Title IX regulations and to update out-of-date language, Highline College (college) will add new, repeal, and amend WAC.

New WAC 132I-126-060, 132I-127-505, 132I-127-515, 132I-127-525, 132I-127-535, 132I-127-545, 132I-127-555, 132I-127-565, 132I-127-575 and 132I-127-585; repealing WAC 132I-126-400, 132I-126-410, 132I-126-420, 132I-126-430, 132I-126-505, 132I-126-515, 132I-126-525, 132I-126-535, 132I-126-545, 132I-126-555, 132I-126-565, 132I-126-575 and 132I-126-585; and amending WAC 132I-126-010, 132I-126-030, 132I-126-040, 132I-126-050, 132I-126-100, 132I-126-125, 132I-126-200, 132I-126-220, 132I-126-230, 132I-126-240, 132I-126-260, 132I-126-270, 132I-126-280, 132I-126-290, 132I-126-300, and 132I-126-350.

Reasons Supporting Proposal: The college is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which will take effect on August 1, 2024. This is set forth in regulations published by the Department of Education on April 29, 2024. Regulations can be found here <https://www.govinfo.gov/content/pkg/FR-2024-04-29/pdf/2024-07915.pdf>.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Highline College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Isabelle Wroblewski, Associate Director of Community Standards and Student Conduct, 2400 South 240th, Des Moines, WA 98198-9800, 206-592-3354.

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 under RCW 34.05.328 and does not apply to college 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 19.85.025(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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 19, 2024

Isabelle Wroblewski, Associate Director
Community Standards and Student Conduct

OTS-5575.2

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-010 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities; ~~((or))~~

(c) ~~((To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.))~~ Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The ~~((student conduct officer))~~ college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-030 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(~~((+13+))~~) (14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student affairs or their designee. (~~Unless otherwise specified~~) Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

(1) The administrator or delegate in charge of any college office, department or facility is responsible for student conduct that takes place in that area, but outside a classroom setting. The administrator or delegate may remove a student from the area within their control if they reasonably believe that the student conduct substantially and materially disrupts college operations and such removal is necessary to protect the learning environment and/or to ensure the safety and well-being of members of the college community and/or to protect property or facilities belonging to the college or members of the college community. Staff directing the removal of a student must report the student's conduct to their administrator in charge at the earliest opportunity. The administrator in charge must report the incident in writing to the student conduct officer at the earliest opportunity.

(2) The instructor or advisor is responsible for student conduct in the classroom or at any college-related activity or event. The instructor or advisor is authorized to remove the student from a single class or college-sponsored event in which the student's conduct materially and substantially disrupts the educational environment. When such behavior results in removal, the instructor or advisor must report the student's conduct in writing to the student conduct officer at the earliest opportunity.

(3) In all cases involving disruption, the student conduct officer or designee will proceed with the investigation and/or disciplinary proceedings at the earliest opportunity consistent with the procedural requirements established in this chapter.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-040 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-050 Definitions. The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment and other property owned, used or controlled by the college.

(3) "Complainant" means the following individuals who are alleged to have been subject to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(4) "Conduct review officer" is the vice president for student services or designee who is responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((4))~~ (5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

~~((5))~~ (6) "Disciplinary appeal" is the process by which an aggrieved ~~((student))~~ party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a

suspension in excess of 10 instructional days or from a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action are reviewed through brief adjudicative proceedings, unless the case is referred to the committee by the student conduct officer or the conduct review officer.

~~((6))~~ (7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email and either intercampus mail or first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

~~((7))~~ (8) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(9) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(10) "Program" or "programs and activities" means all operations of the college.

(11) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(12) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(13) "Respondent" is ~~((the))~~ a student ~~((against whom disciplinary action is initiated))~~ who is alleged to have violated the student conduct code.

~~((8))~~ (14) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail, whichever is first.

~~((9))~~ (15) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and

whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been admitted for admission are considered "students."

~~((10))~~ (16) "Student conduct officer" is a college administrator designated by the vice president for student services to be responsible for implementing and enforcing the student conduct code. The vice president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

~~((11))~~ (17) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education; and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(18) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

~~((12) "The president" is the president of the college. The president is authorized to delegate any of his or her responsibilities as set forth in this chapter as may be reasonably necessary.)~~ (19) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(20) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with college policy.

NEW SECTION

WAC 132I-126-060 Amnesty. (1) In situations involving intoxication, alcohol poisoning, or drug-related medical issues, students, or student groups, are encouraged to seek swift medical assistance for themselves and others without fear of penalty. Students requesting and receiving medical assistance in these situations are not typically

subject to the student conduct process. This policy refers to isolated incidents and does not excuse students who repeatedly or flagrantly violate the alcohol or drug policy, nor does it preclude action arising from other violations of the code. The college will consider the positive impact of reporting a situation when determining any course of action. Without imposing sanctions, the college may initiate educational remedies regarding alcohol or drug use.

(2) Complainants and witnesses who in good faith report sexual harassment will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual harassment unless their own conduct placed another person's health or safety at risk.

AMENDATORY SECTION (Amending WSR 23-21-054, filed 10/11/23, effective 11/11/23)

WAC 132I-126-100 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating: Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person, or artificial intelligence, 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 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 assignment.

(d) Collusion includes assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or to increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(e) Academic misconduct includes intentionally violating college policies, such as altering grades, misrepresenting one's identity failing to report known incident of academic dishonesty or participating in obtaining or distributing any part of the test or any information about a test.

Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; ~~((\neq))~~

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee; or

(d) Knowingly making a false statement or submitted false information in relation, or in response, to a college academic or disciplinary investigation or process.

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders.

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) ~~((**Assault, intimidation, harassment.**))~~ **Abuse of others.** Assault, unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, ((harassment, bullying,)) or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law. ~~((For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victims.))~~

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism or other nonaccidental damaging or destruction of college 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 college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons violation.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on

the college campus and during college programming and activities, subject to the following exceptions:

(a) Commissioned law enforcement personnel, legally authorized military personnel, or approved contractors, while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling and/or self-defense sprays when possessed and/or used for self-defense.

(9) **Hazing.**

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;

(ii) Any pastime or amusement engaged in with respect to such a student group; or

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) **Alcohol, cannabis, drug, and tobacco violations.**

(a) **Alcohol.** ~~((The)) Use, possession, ((delivery, sale, or being~~ observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies)) manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(b) ~~((**Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana-))~~ **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational

use of ((marijuana)) cannabis, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, production, delivery, sale, or being observably 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.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law. This includes, but is not limited to: Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(12) **Discriminatory ((conduct)) harassment.** ((Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132I-126-505 through 132I-126-585 (supplemental Title IX student conduct procedures).

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) 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 intercourse 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.~~

~~(ii) 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.~~

~~(iii) 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.~~

~~(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.~~

~~(v) Domestic violence. 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.~~

~~(vi) Dating violence, 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.~~

~~(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety, or the safety of others, or suffer substantial emotional distress.~~

~~(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.~~

~~(14) **Harassment.** Unwelcome and 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 as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.)~~

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(13) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly-situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, dating violence, and stalking.

(A) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse 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 (fondling)** is 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 (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020 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.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and 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.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(14) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking other adverse action of any kind against ((a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding)) any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies.

- (16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:
- (a) Unauthorized use of such resources or opening of a file, message, or other item;
 - (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
 - (c) Unauthorized use or distribution of someone else's password or other identification;
 - (d) Use of such time or resources to interfere with someone else's work;
 - (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
 - (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
 - (g) Use of such time or resources in violation of applicable copyright or other law;
 - (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
 - (i) Failure to comply with the college's electronic use policy.
- (17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.
- (18) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.
- (19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.
- (20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.
- ~~((In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.))~~

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-125 Corrective action, disciplinary sanctions, and terms and conditions. (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon students or upon college sponsored student organizations, athletic teams, or living groups found to have violated the student conduct code.

(a) **((Disciplinary)) Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be

cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the ~~((action is taken))~~ suspension is imposed.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the ~~((action is taken))~~ dismissal is imposed.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact ((order)) directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **((Educational sanction)) Education.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(f) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(h) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-200 Initiation of disciplinary action. ~~((1)) All disciplinary action will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the vice president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.~~

~~(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s) and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.~~

~~(3) Within ten business days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the sanctions imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.~~

~~(4) The student conduct officer may take any of the following disciplinary actions:~~

~~(a) Exonerate the respondent and terminate the proceedings.~~
~~(b) Impose disciplinary sanction(s) outlined in this chapter.~~
~~(c) Impose disciplinary terms and conditions alone or in conjunction with a disciplinary sanction including, but not limited to, disciplinary terms and conditions identified in WAC 132I-126-125(2).~~
~~(d) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.)~~

(1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** For reports of behavior that took place prior to August 1, 2024, refer to and use chapter 132I-127 WAC procedures. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

(11) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132I-126-125; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) In cases involving allegations of sex-based harassment, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-220 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex-based harassment, as set forth in WAC 132I-126-200(12) (Initiation of Disciplinary Action), the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~twenty-one~~) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant if any, and the (~~conduct review~~) student conduct officer.

(4) A respondent who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has the right to a prompt, fair and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ~~((ten))~~ 10 instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer or the conduct review officer.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ~~((ten))~~ 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any disciplinary conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and exonerations are final actions and are not subject to appeal.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-230 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ~~((ten))~~ 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((twenty-one))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspen-

sion of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-240 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the vice president for student services or designee, provided the respondent files a written request for review with the conduct review officer within (~~twenty-one~~) 21 calendar days of service of the initial decision.

(2) The vice president for student services or designee shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the vice president for student services or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within (~~twenty~~) 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the vice president for student services or designee does not make a disposition of the matter within (~~twenty~~) 20 business days after the request is submitted.

(5) If the vice president for student services or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-260 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the faculty senate;
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the vice president for (~~student~~) administrative services at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. (~~The~~

chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.)

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-270 ((Appeals to the)) Student conduct committee—Prehearing. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven (~~(business)~~) calendar 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 may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five (~~(business)~~) calendar days before the hearing by any party or at the direction of the committee

chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent.

If doing so, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer (~~(, upon request,)~~) shall provide reasonable assistance to the respondent (~~(in obtaining relevant and admissible evidence that is within the college's control)~~) and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by ((a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer)) an advisor of their choice, which may be an attorney retained at the student's expense.

(10) The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) That the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct committee;

(iii) That they may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown,

the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-280 Student conduct committee hearings—Presentations of evidence.

(1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) With the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to questions being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-290 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions and/or a proposed decision for its consideration.

(2) Within (~~twenty-one~~) 21 calendar days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the vice president for student services.

(5) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-300 Appeal from student conduct committee initial decision. (1) (~~(A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision.)~~) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) (~~The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing~~)

~~from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.~~

~~(3) The president shall provide a written decision to all parties within forty five days after receipt of the notice of appeal. The president's decision shall be final.~~

~~(4)) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:~~

~~(a) Procedural irregularity that would change the outcome;~~

~~(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and~~

~~(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.~~

~~(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.~~

~~(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.~~

~~(5) The president shall serve a written decision on all parties and their attorneys, if any, within 21 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.~~

~~(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.~~

~~(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.~~

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-350 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation and/or formal disciplinary procedure is pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two (~~(business))~~ calendar days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the (~~(student))~~ respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132I-126-400	Supplemental sexual misconduct procedures.
WAC 132I-126-410	Supplemental definitions.
WAC 132I-126-420	Supplemental complaint process.
WAC 132I-126-430	Supplemental appeal rights.
WAC 132I-126-505	Order of precedence.
WAC 132I-126-515	Prohibited conduct under Title IX.
WAC 132I-126-525	Title IX jurisdiction.
WAC 132I-126-535	Initiation of discipline.
WAC 132I-126-545	Prehearing procedure.
WAC 132I-126-555	Rights of parties.
WAC 132I-126-565	Evidence.
WAC 132I-126-575	Initial order.
WAC 132I-126-585	Appeals.

OTS-5576.1**Chapter 132I-127 WAC****SUPPLEMENTAL DISCIPLINE PROCEDURES FOR CASES INVOLVING TITLE IX SEXUAL HARASSMENT FOR INCIDENTS PRIOR TO AUGUST 1, 2024**NEW SECTION

WAC 132I-127-505 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. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132I-126-010 through 132I-126-300, these supplemental procedures shall take precedence for behaviors that took place prior to August 1, 2024. Highline College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 132I-127-515 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college 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) Dating violence. 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.

(2) Domestic violence. 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 26.52.010.

(3) Hostile environment. 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 college's educational programs or activities, or employment.

(4) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(5) 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 intercourse 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.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132I-127-525 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity;
and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college 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 college.

(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 (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132I-127 WAC.

(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 132I-127-535 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 that 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 committee 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 college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132I-127-545 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132I-126-270. 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 committee 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 college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132I-127-555 Rights of parties. (1) The college's student conduct procedures, WAC 132I-126-200, and this supplemental procedure shall apply equally to all parties.

(2) The college 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 college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132I-127-565 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) 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.

(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.

NEW SECTION

WAC 132I-127-575 Initial order. (1) In addition to complying with WAC 132I-126-290, the student conduct committee will be responsible for conferring and drafting an initial order 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 committee'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 college's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132I-127-585 Appeals. (1) 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 responses 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 responses 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 is 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) The 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 24-17-143

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed August 21, 2024, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-138.

Title of Rule and Other Identifying Information: Proposed new WAC 468-30-130 Transfer, lease, disposal of public property for affordable housing.

Hearing Location(s): On October 2, 2024, at 3:00 p.m., virtual hearing in Microsoft Teams https://bit.ly/WAC_468-30-130_10-02-24. To join the hearing, please use the web address shown for the location or dial in by phone +1-206-531-0324,,956920994# United States, Seattle, 206-531-0324,,956920994# United States (toll-free), find a local number <https://dialin.teams.microsoft.com/039e7852-bef4-4986-949b-6b82f4e2095f?id=956920994>, Phone conference ID 956 920 994#. For further details about joining a Microsoft Teams meeting, you can visit this web page <https://aka.ms/JoinTeamsMeeting?omkt=en-US>.

Date of Intended Adoption: October 2, 2024.

Submit Written Comments to: Robin Curl, P.O. Box 47338, Olympia, WA 98504-7338, email robin.curl@wsdot.wa.gov, beginning September 3, 2024, at 8:00 a.m., by October 1, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Washington state department of transportation (WSDOT) ADA office, toll-free 855-362-4ADA (4232), TTY 711, email wsdotada@wsdot.wa.gov, by September 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 39.33.015(3) requires rules for the disposition of property for public benefit purposes. WSDOT anticipates that this rule will result in the creation of affordable housing.

Reasons Supporting Proposal: This rule will implement the requirements of RCW 39.33.015(3).

Statutory Authority for Adoption: RCW 39.33.015(3).

Statute Being Implemented: RCW 39.33.015.

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

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Robin Curl, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-6968; Enforcement: J. Kevin Workman, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7324.

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 is not required because WSDOT is not subject to RCW 34.05.328 (5)(a)(i), and RCW 34.05.328 (5)(a)(ii) has not been made applicable to 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).

Explanation of exemptions: WSDOT is not exercising regulatory authority. The rule only relates to WSDOT's proprietary management of real property. The rule does not impose costs on anyone; it actually does the opposite and eliminates costs. The rule does not apply to private businesses, only government entities and select nonprofits.

Any indirect costs to small businesses would likely be "minor costs" allowed by the statute.

Scope of exemption for rule proposal:
Is fully exempt.

August 21, 2024
Nikki Nisbet
Acting Director
Business Support Services

OTS-5717.3

NEW SECTION

WAC 468-30-130 Transfer, lease, disposal of public property for affordable housing. (1) The department may enter into lease agreements with public, private, and nongovernmental bodies, allowing them to construct and operate affordable housing on land under the jurisdiction of the department, for less than fair economic rent if the following conditions are met:

- (a) The leased premises is not presently needed for highway purposes;
- (b) The leased premises is used for housing for low-income and very low-income households as defined in RCW 43.63A.510, and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons;
- (c) The tenant pays all appraisal costs, debt services, and any other liabilities to the department for the processing and execution of the lease;
- (d) The leased premises is subject to the provisions and requirements of zoning ordinances of political subdivisions of government;
- (e) The use of the leased premises is consistent with existing locally adopted comprehensive plans as described in RCW 36.70A.070;
- (f) The lease terminates if the tenant fails to use the premises for affordable housing;
- (g) The lease authorizes the department to terminate the lease if the leased premises is needed for a highway purpose;
- (h) The lease provides that prior to termination, the tenant agrees, if so directed by the department, to restore the leased premises to its condition prior to tenant's occupancy, reasonable wear and tear excepted. This work is to be done at tenant's expense to the satisfaction of the department. In the event tenant fails to restore leased premises upon termination, the department may restore the leased premises as it deems appropriate and at tenant's expense.

(2) The department may transfer real property to public, private, and nongovernmental bodies, at less than fair market value for the construction and operation of affordable housing if the following conditions are met:

- (a) The property is no longer required for transportation purposes;
- (b) The property is used for housing for low-income and very low-income households as defined in RCW 43.63A.510, and related facilities

that support the goals of affordable housing development in providing economic and social stability for low-income persons;

(c) Consideration includes appraisal costs, debt services, all closing costs, and any other liabilities to the department;

(d) The use of the property is consistent with existing locally adopted comprehensive plans as described in RCW 36.70A.070;

(e) The transfer is executed with a quitclaim deed;

(f) The deed contains a covenant or other requirement that the property shall be used for the designated public benefit purpose;

(g) The deed contains remedies that apply if the grantee fails to use the property for the designated purpose or ceases to use it for such purpose. Such remedies shall include clauses reverting title to the department, or the payment of fair market value.

(3) The department must comply with RCW 39.33.020.

WSR 24-17-145
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed August 21, 2024, 11:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-053 [24-14-053].

Title of Rule and Other Identifying Information: Early learning division (ELD) child care subsidy is revising WAC 110-15-0005 Eligibility, 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst, 110-15-0065 Calculation of income, and 110-15-0075 Determining income eligibility and copayment amounts.

Hearing Location(s): On September 24, 2024, telephonic. Comments can be made by calling 360-972-5385 and leaving a voicemail that includes the comment, emailing rules coordinator, or mailing comments to the department of children, youth, and families' (DCYF) physical mailing address. All comments must be received by the date and time listed below.

Date of Intended Adoption: September 25, 2024.

Submit Written Comments to: DCYF Rules Coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, beginning 8:00 a.m., August 22, 2024, by 11:59 p.m., September 24, 2024.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by September 17, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHBs require ELD to implement changes regarding the eligibility requirement for child care and food assistance. These laws also require ELD to implement changes that allow individuals utilizing birth to three early childhood education and assistance program (ECEAP) and early head start programs as an approved activity for eligibility. These WAC revisions are necessary to comply with the November 1, 2024, legislative requirements.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 43.216.020, 43.216.065; SHB 1945, section 1, chapter 225, Laws of 2024; 2SHB 2124, section 4, chapter 282, Laws of 2024.

Statute Being Implemented: Chapter 34.05 RCW; RCW 43.216.020, 43.216.065; SHB 1945, section 1, chapter 225, Laws of 2024; 2SHB 2124, section 4, chapter 282, Laws of 2024.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Christin James, Olympia, 360-688-0479; Implementation and Enforcement: DCYF, statewide.

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. DCYF is not among the agencies listed as required to comply with 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.

Scope of exemption for rule proposal:
Is fully exempt.

August 21, 2024
Brenda Villarreal
Rules Coordinator

OTS-5796.2

AMENDATORY SECTION (Amending WSR 24-17-059, filed 8/15/24, effective 9/15/24)

WAC 110-15-0005 Eligibility. (1) Consumers at the time of application and reapplication must meet the following requirements to be eligible for WCCC:

- (a) Have parental control of one or more eligible children;
- (b) Live in Washington state;
- (c) Participate in an approved activity or meet the eligibility special circumstances requirements under WAC 110-15-0020, 110-15-0023, or 110-15-0024;
- (d) Not have assets that exceed \$1,000,000;
- (e) Have an agreed payment arrangement with any provider to whom any outstanding WCCC copayment is owed; and
- (f) Have one of the following:
 - (i) Countable income at or below:
 - (A) Sixty percent of the SMI at initial application; or
 - (B) Sixty-five percent of the SMI at reapplication;
 - (ii) A household annual income adjusted for family size that does not exceed 75 percent of the SMI within the first 12 months of a state-registered apprenticeship program; or
 - (iii) Have a household annual income adjusted for family size that does not exceed 85 percent of the SMI and confirmed or verified in the department's electronic workforce registry to be employed by:
 - ~~(A) A licensed or certified child care provider ((as confirmed or verified in the department's electronic workforce registry and have a household annual income adjusted for family size that does not exceed 85 percent of the SMI));~~
 - (B) An early childhood education and assistance program;
 - (C) A birth to three early childhood education and assistance program;
 - (D) A head start program;
 - (E) An early head start program; or
 - (F) A successor federal program.

(2) Parents currently attending high school or who are age 21 or younger and completing a high school equivalency certificate are eligible for WCCC if their income does not exceed 85 percent of the SMI at the time of application.

(3) Children must meet the following requirements to be eligible for WCCC:

- (a) Reside in Washington state; and
- (b) Be less than age:
 - (i) Thirteen on the first day of eligibility; or
 - (ii) Nineteen and:

- (A) Have a verified special need, as outlined in WAC 110-15-0020;
or
(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 24-17-059, filed 8/15/24, effective 9/15/24)

WAC 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst. Applicants and consumers:

- (1) Not participating in WorkFirst activities may be eligible for WCCC benefits for the following approved activities:
- (a) Employment;
 - (b) Self-employment;
 - (c) Supplemental nutrition assistance program employment and training (SNAP E&T); ((~~en~~))
 - (d) Have a child enrolled in a birth to three early childhood education and assistance program, an early head start program; or
 - (e) The following education programs:
 - (i) High school or working towards a high school equivalency certificate for consumers under age 22;
 - (ii) Part-time enrollment in a:
 - (A) Vocational education;
 - (B) Adult basic education (ABE);
 - (C) High school equivalency certificate for consumers age 22 and older; or
 - (D) English as a second language (ESL) program combined with an average of:
 - (I) Twenty or more employment hours per week;
 - (II) Sixteen or more work-study hours per week; or
 - (iii) For full-time students of a community, technical, or tribal college, enrollment in:
 - (A) A vocational education program that leads to a degree or certificate in a specific occupation;
 - (B) An associate degree program; or
 - (C) A registered apprenticeship program.
 - (2) Who meet the requirements of subsection (1)(d) of this section are eligible to receive subsidy payment for up to 10 hours per week of study time for approved classes.
 - (3) Who are eligible for WCCC benefits under the terms of this section are eligible to receive subsidy payment for:
 - (a) Transportation time between the child care location and the consumer's place of employment or approved activity; and
 - (b) Up to eight hours of sleep time before or after a night shift.

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0065 Calculation of income. ((~~DSHS~~)) The department uses a consumer's countable income when determining income eligibility and copayment. A consumer's countable income is the sum of all their income listed in WAC 110-15-0060 minus any child support paid out

through a court order, division of child support administrative order, or tribal government order.

(1) To determine a consumer's income, ((DSHS)) the department must either:

(a) Calculates an average monthly income by:

(i) Determining the number of months, weeks, or pay periods it took the consumer's WCCC household to earn the income((+)) and dividing the income by the same number of months, weeks or pay periods((+)); or

(ii) ((If the past wages are no longer reflective of the current income, DSHS may accept)) Accepting the employer's statement of current((+)) or anticipated wages for future income determination((+)) if the past wages are no longer reflective of the current income; or

(b) ((When the consumer begins new employment and has less than three months of wages, DSHS uses)) Use the best available estimate of the consumer's WCCC household's current income when the consumer begins new employment and has less than three months of wages as:

(i) ((As)) Verified by the consumer's employer; or

(ii) ((As)) Provided by the consumer through a verbal or written statement documenting the new employment at the time of application, reapplication or change reporting, and wage verification within ((sixty)) 60 calendar days of ((DSHS)) the department's request.

(2) If a consumer receives a lump sum payment, ((+)) such as money from the sale of property or back child support payment((+)), in the month of application or during the consumer's WCCC eligibility:

(a) ((DSHS calculates)) The department must:

(i) Calculate a monthly amount by dividing the lump sum payment by ((twelve)) 12; and

((b) DSHS adds)) (ii) Add the monthly amount to the consumer's expected average monthly income for the:

((i) For the)) (A) Month it was received; and

((ii) For the)) (B) Remaining months of the current eligibility period; and

((e)) (b) To remain eligible for WCCC the consumer must meet WCCC income guidelines after the lump sum payment is applied.

(3) Active recipients of the supplemental nutrition assistance program are income eligible.

AMENDATORY SECTION (Amending WSR 24-17-059, filed 8/15/24, effective 9/15/24)

WAC 110-15-0075 Determining income eligibility and copayment amounts. (1) The department determines consumers' eligibility and copayments, when care is provided under a WCCC voucher or contract, by:

(a) Family size as described in WAC 110-15-0015; and

(b) Countable income as described in WAC 110-15-0065.

(2) The department calculates consumers' copayments as follows:

If the household's income is:	Then the household's maximum monthly copayment is:
At or below 20 percent of the SMI	Waived

If the household's income is:	Then the household's maximum monthly copayment is:
Above 20 percent and at or below 36 percent of the SMI	\$65
Above 36 percent and at or below 50 percent of the SMI	\$90
Above 50 percent and at or below 60 percent of the SMI	\$165
At reapplication, above 60 percent and at or below 65 percent of the SMI	\$215
An applicant between 60 percent and 75 percent of the SMI for families participating in a state-registered apprenticeship	\$215

(3) Active recipients of the supplemental nutrition assistance program are income eligible and the copayment will be determined using the income standards in subsection (2) of this section.

(4) The department does not prorate copayments when consumers use care for only part of a month.

~~((4))~~ (5) The department waives copayments for eligible consumers who ~~(are)~~ meet one or more of the following:

(a) Age 21 years or younger who attend high school or are working towards completing a high school equivalency certificate;

(b) Employed by ~~((a licensed or certified child care provider))~~, as confirmed or verified in the department's electronic workforce registry~~((+))~~:

(i) A licensed or certified child care provider;

(ii) An early childhood education and assistance program;

(iii) A birth to three early childhood education and assistance program;

(iv) A head start program;

(v) An early head start program; or

(vi) A successor federal program;

(c) ~~((Eligible))~~ Eligibility under:

(i) WAC 110-15-0023; or

(ii) WAC 110-15-0024.