

WSR 24-19-048

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed September 11, 2024, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-086.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is planning to amend the following WAC sections related to training and continuing education rules due to SB 5811 (chapter 322, Laws of 2024): WAC 388-71-0523, 388-71-0839, 388-71-0875, 388-71-0880, 388-71-0888, 388-71-0890, 388-71-0971, 388-71-0977, 388-71-0991, 388-71-1001 and 388-115-0523; and repeal WAC 388-71-0990.

Hearing Location(s): On November 5, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: No later than November 6, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on September 18, 2024, by 5:00 p.m. on November 5, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on October 22, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes include:

- Compliance with SB 5811 passed during the 2024 legislative session;
- Clarification of continuing education requirements related to the date of hire;
- Acknowledgment of the Interstate Nurse Licensure Compact related to training requirements; and
- Combining WAC 388-71-0990 and 388-71-0991 into a single section.

Reasons Supporting Proposal: The changes to the law related to training and continuing education affect all long-term care workers. Rules must be changed in response to and in compliance with the new laws including SB 5811 and the Interstate Nurse Licensure Compact. Other edits related to clarity and consistency are also included, along with the combining of two very similar sections.

Statutory Authority for Adoption: RCW 18.88B.010, 18.88B.041, 74.08.090, 74.39A.076, 74.39A.341, and chapter 18.80 RCW.

Statute Being Implemented: RCW 18.88B.010, 18.88B.041, 74.08.090, 74.39A.076, 74.39A.341, and chapter 18.80 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Chappell, P.O. Box 45600, Lacey, WA 98504-5600, 360-725-2516.

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 Dave Chappell, P.O. Box 45600, Lacey, WA 98504-5600, phone 360-725-2516, email david.chappell@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Changes to RCW 18.88B.041, 74.39A.076, 74.39A.341, and chapter 18.80 RCW require rules changes to reflect new language.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting Dave Chappell, P.O. Box 45600, Lacey, WA 98504-5600, phone 360-725-2516, email david.chappell@dshs.wa.gov.

September 9, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5041.3

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0523 What are the training and certification requirements for individual providers and home care agency long-term care workers? The following chart provides a summary of the training and certification requirements for individual providers and home care agency long-term care workers. This includes criteria for those providers working limited hours for one person, caring only for one's child, parent, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild including when related by marriage or domestic partnership, providing respite services, or providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs:

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
<p>(1) An individual provider or home care agency long-term care worker who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).</p>	<p>ARNP, RN, LPN, HCA, ((CN-A)) <u>NA-C</u>, or other professionals listed in WAC 388-71-0839.</p>	<p>Not required.</p>	<p>Not required.</p>	<p>Not required.</p>	<p>Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required 12 hours under WAC ((388-71-0990 and)) 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. For NA-C and those with special education training 12 hours is required for each year worked in long-term care.</p>	<p>Required under chapter 246-980 WAC.</p>
<p>(2) An individual provider or home care agency long-term care worker with specific employment history.</p>	<p>A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the date of hire. WAC 388-71-0839.</p>	<p>Not required.</p>	<p>Not required.</p>	<p>Not required.</p>	<p>12 hours is required for each year worked in long-term care under WAC ((388-71-0990 and)) 388-71-0991.</p>	<p>Not required.</p>
<p>(3) An individual provider or home care agency long-term care worker.</p>	<p>Hired by a licensed home care agency or the consumer directed employer to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 70 hours under WAC 388-71-0870 and 388-71-0875.</p>	<p>Required. 12 hours under WAC ((388-71-0990 and)) 388-71-0991.</p>	<p>Required under chapter 246-980 WAC.</p>

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(4) An individual provider who works limited hours for one person.	An individual provider employed by the consumer directed employer providing 20 hours or less of nonrespite care for one person per calendar month and does not meet the criteria in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.
((5)) (5) An individual who provides respite services and works 300 hours or less in any calendar year.	(a) An individual providing respite care who works no more than 300 hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section. (b) Individual providing respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. Nine hours under WAC 388-71-0890.	Not required.	Not required.
(6) An individual provider caring only for the provider's ((biological, step, or adoptive)) adult child.	An individual providing care only for the provider's adult child that receives services through the developmental disabilities administration and not exempt under subsection (1) or (2) of this section.	Required. Two hours ((per)) under WAC 388-71-0895.	Required. Three hours under WAC 388-71-0895.	Required. Seven hours under WAC 388-71-0890.	Not required <u>until January 1, 2027, then 12 hours for each year worked in long-term care under WAC 388-71-0991.</u>	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
<p>((7)) An individual provider caring only for the provider's biological, step, or adoptive child, or parent.</p>	<p>An individual providing care only to the individual's child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>12 hours is required for each year worked in long-term care for an individual provider caring only for the provider's biological, step, or adoptive parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for the provider's biological, step, or adoptive child under WAC 388-71-1001.</p>	<p>Not required.))</p>
<p>((8)) (7) An individual provider caring only for the provider's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.</p>	<p>An individual providing care only for the individual provider's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership, who is not exempt in subsection (1) or (2) of this section, and does not meet the criteria in subsection (6) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>Not required until January 1, 2027, then 12 hours for each year worked in long-term care under WAC 388-71-0991.</p>	<p>Not required.</p>
<p>((9)) (8) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.</p>	<p>A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs who is not exempt in subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>12 hours is required for each year worked in long-term care under ((WAC 388-71-0990 and)) 388-71-0991.</p>	<p>Not required.</p>

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0839 Which long-term care workers are exempt from the 70-hour, 30-hour, nine-hour, or seven-hour basic training requirements? The following long-term care workers are exempt from the 70-hour, 30-hour, nine-hour, or seven-hour basic training requirement:

- (1) An individual employed as a long-term care worker on January 6, 2012, who complied with the basic training requirements in effect on the date of hire;
- (2) An individual previously employed as a long-term care worker who completed the basic training requirements in effect on the date of hire, and was employed as a long-term care worker at some point between January 1, 2011, and January 6, 2012;
- (3) Registered nurses, licensed practical nurses, and advanced registered nurse practitioners licensed under chapter 18.79 or 18.80 RCW;
- (4) Nursing assistants certified under chapter 18.88A RCW and persons in an approved training program for certified nursing assistants under chapter 18.88A RCW provided that they complete the training program within 120 days of the date of hire and the department of health has issued a nursing assistant certified credential within 200 days of the date of hire;
- (5) A home health aide who was employed by a medicare certified home health agency within the year before being hired as a long-term care worker and has met the requirements of 42 C.F.R., Sec. 484.36;
- (6) An individual with special education training who has an endorsement granted by the Washington state superintendent of public instruction as described in RCW 28A.300.010; and
- (7) A home care aide (HCA) certified under chapter 18.88B RCW.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0875 Who must complete the 70-hour basic training and by when? Unless exempt from training in WAC 388-71-0839(1) through (7), ~~((all))~~ long-term care workers required to complete the 70-hour basic training must complete core and population specific competencies within 120 days of the date of hire as described in WAC 388-71-0837.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0880 Who must complete the 30-hour basic training and by when must it be completed? Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (7), the following individuals must complete the 30-hour basic training under WAC 388-71-0885 within 120 days of the date of hire as described in WAC 388-71-0837:

- (1) An individual provider who only cares for that provider's ~~((÷))~~ ~~((a) biological, step, or adoptive)~~ child, ~~((⊕))~~ parent ~~((⊕))~~.

~~((b))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; ~~((e))~~

(2) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs; or

(3) A long-term care worker who provides no more than 20 hours of nonrespite care for one person who is not the individual provider's ~~((f))~~

~~((a) biological, step, or adoptive))~~ child, ~~((e))~~ parent ~~((f))~~, ~~((e))~~

~~((b))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0888 When do the 70-hour basic training and certification requirements apply to an individual whose required basic training was previously less than 70 hours? (1) The following individual providers must complete 70 hours of basic training and become a certified home care aide under WAC 388-71-0523:

(a) ~~((Individual providers))~~ An individual provider (IP) who previously provided no more than 20 hours of nonrespite care in any calendar month for one person who is not the provider's:

(i) ~~((biological, step, or adoptive))~~ Child, ~~((e))~~ parent ~~((f))~~, ~~((ii))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

~~((iii))~~ (ii) Spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs;

(A) Who continue to work for one unrelated client whose authorized monthly hours fluctuate above 20 hours per month; or

(B) Who begin to work for a second client.

(b) ~~((Individual providers))~~ An IP who ~~((provide))~~ provides respite services and worked more than 300 respite hours in any calendar year;

(c) ~~((Individual providers))~~ An IP who ~~((begin))~~ begins working for an unrelated client who previously only provided personal care to the provider's:

(i) ~~((biological, step, or adoptive))~~ Child, ~~((e))~~ parent ~~((f))~~, ~~((e))~~

~~((ii))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

~~((iii))~~ (ii) Spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.

(2) When an IP described in subsection (1) of this section is required to complete the 70-hour basic training and become a certified home care aide, the IP will:

(a) Have 120 days from the date of the change to complete the 70-hour basic training and 200 days from the date of the change to become certified; and

(b) Be required to complete continuing education under WAC 388-71-0990.

(3) For the purpose of this section, the date of the change means the date on which the IP:

(a) Began working for a client that is not the individual's:

(i) ~~((biological, step, or adoptive))~~ Child, ~~((or))~~ parent ~~((or))~~,

~~((or))~~ ~~((or))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

~~((or))~~ ~~((or))~~ (ii) Spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

(b) Exceeded 20 hours of work in one month; or

(c) Exceeded 300 respite hours in one calendar year.

(4) If an IP is required to or chooses to become a certified home care aide and completes the 70-hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain the credential and complete continuing education requirements even if:

(a) The monthly authorized hours are later reduced to 20 or fewer hours;

(b) The individual no longer works for more than one unrelated client; or

(c) The individual works 300 or fewer respite hours in a calendar year.

(5) The training and certification requirements for an individual that met the criteria in subsection (4) of this section does not apply if the individual returns to work only for the individual's:

(a) ~~((biological, step, or adoptive))~~ Parent, ~~((or))~~ adult child,

~~((or))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

~~((or))~~ (b) Spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0890 What are the training requirements for parent providers who are individual providers for their adult children through DDA? Unless exempt from the basic training requirements as defined in WAC 388-71-0839 (1) through (7), a ~~((biological, step, or adoptive))~~ parent, including when related by marriage or domestic partnership, who is the individual provider for ~~((his or her))~~ their adult child receiving services through the DSHS developmental disabilities administration must complete the ~~((twelve))~~ 12-hour parent provider training, as described in WAC 388-71-0895, within ~~((one hundred twenty))~~ 120 days from the begin date of the authorization to provide department paid, in-home services.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-71-0971 Prior to hiring a long-term care worker, what training and certification requirements must be reviewed by the home care agency or department? Before hiring a long-term care worker, the home care agency or the department acting on behalf of the client, as defined under RCW 74.39A.009; or the consumer directed employer (CDE) under chapter 74.39A RCW; must review and verify the highest level of training or certification achieved by the individual.

(1) When the individual is a home care aide certified under chapter 18.88B RCW, the home care agency, CDE, or department must:

(a) Verify that the individual's home care aide certification is current and in good standing; and

(b) Confirm and document that the individual either holds current home care aide certification, or if not required to obtain certification, is in compliance with continuing education as required under ((WACs 388-71-0990 and)) WAC 388-71-0991 only for the compliance year in which they are hired.

(2) When the individual is exempt from the 70-hour home care aide training and certification requirements under WAC 388-71-0839, the home care agency, CDE, or department must review and verify the following:

(a) Documents demonstrating the individual's exemption status from training and certification which may include:

(i) Washington state provider active credential number, showing that the individual's license or certification is current and in good standing;

(ii) A letter from a former or current employer documenting work history during the exemption period described in WAC 388-71-0839;

(iii) Employment history records from the Washington state employment security department documenting work history information during the exemption period;

(iv) Federal tax statements documenting work history information during the exemption period; or

(v) Documentation showing completion of the basic training as required under WAC 388-71-0839;

(b) For the year in which they are hired, documentation of completion of 12 hours of continuing education, or information on when the continuing education must be completed, that complies with ((WAC 388-71-0990 and)) WAC 388-71-0991.

(3) Individuals who have worked as long-term care workers in the past, but who did not complete the basic training or certification required at the time, may be eligible to have the date of hire reset in accordance with this section and WAC 388-71-0980.

(a) Individuals who are eligible to reset their date of hire as provided in WAC 388-71-0980 must submit a new application and fee to the department of health and adhere to the training or certification requirement under this chapter.

(b) Individuals who are not eligible to reset the date of hire as provided in WAC 388-71-0980 must not be paid to provide personal care assistance until they complete required training and become certified as a long-term care worker.

(4) The home care agency, or the department acting on behalf of the client, as defined under RCW 74.39A.009; or the ((consumer directed employer)) CDE under chapter 74.39A RCW must comply with continuing education documentation requirements under WAC 388-71-0970.

(a) Individuals (~~((who worked in the previous year in a long-term care setting during the previous calendar year,))~~) are held accountable for continuing education completion by their new employer on the date of hire and shall provide at new hire, documentation of their continuing education compliance (~~((during))~~) for the calendar year hired; or

(b) Individuals who work for multiple employers or move between employers shall on the date of hire, provide documentation of continuing education compliance for the calendar year in which they are hired, if hired after their birthdate.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0977 Once an individual is required to obtain certification as a home care aide, may that individual revert to exempt status?

(1) If an individual is required to or chooses to become a certified home care aide and completes the 70-hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain the credential and complete continuing education requirements even if:

(a) The monthly authorized hours are later reduced to 20 or fewer hours;

(b) The individual no longer works for a second unrelated client; or

(c) The individual works 300 respite hours or less in a calendar year.

(2) The training and certification requirements for an individual that met the criteria in subsection (1) of this section does not apply when the individual returns to work only for the individual's:

(a) (~~((biological, step, or adoptive))~~) Parent, (~~((or))~~) adult child(~~((or))~~),

(~~((b))~~) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

(~~((c))~~) (b) Spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-71-0991 ((When)) Who is required to complete continuing education training and when must a long-term care worker or certified home care aide complete continuing education? (1) All long-term care workers who are certified home care aides must comply with the continuing education requirements under chapter 246-980 WAC.

(2) Long-term care workers, who are exempt from home care aide certification as described in RCW 18.88B.041, unless exempt from continuing education as described under WAC 388-71-1001 must complete and provide documentation of 12 hours of continuing education within 45 calendar days of being hired or by the long-term care worker's birthdate in the calendar year hired, whichever is later; and

(a) Must complete 12 hours of continuing education by the long-term care worker's birthday each calendar year worked thereafter; or

(b) If the 45 calendar day time period allows the long-term care worker to complete continuing education in January or February of the following year, the credit hours earned will be applied to the calendar year in which the long-term care worker was hired.

(3) If the renewal period following initial certification as a home care aide or nursing assistant (NA-C), is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

(4) ~~((For))~~ Unless exempt under WAC 388-71-1001, long-term care workers who are caring for a ((biological, step, or adoptive)) parent, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership, or providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs, continuing education must be completed on or before their birthday in the year after basic training was completed. ((If these long-term care workers have not worked in long-term care for a calendar year or longer, the worker can complete the continuing education requirement as provided in subsection (2) of this section.))

(5) A certified home care aide or long-term care worker exempt from home care aide certification as described in RCW 18.88B.041 who did not complete the continuing education requirements by the time frame described in this section must not be paid to provide care after that date.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-1001 Which long-term care workers are exempt from the continuing education requirement? (1) Until January 1, 2025, continuing education is not required for individual providers caring for only the provider's:

(a) Biological, step, or adoptive child, or

(b) Sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.

(2) Beginning January 1, 2025, and until January 1, 2027, ((Continuing)) continuing education is not required for ((any of the following:

(1) Individual)) individual providers caring only for the provider's (:

(a) biological, step, or adoptive)) parent, child((; or

(b))), sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.

((2) Individual)) (3) Continuing education is not required for individual providers that:

(a) Provide no more than 20 hours of nonrespite care in any calendar month to only one person who is not the provider's (:

(i) biological, step, or adoptive)) child((; or)),

((~~ii~~)) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership(~~(~~+~~)~~), or

(b) Provide respite services and work 300 hours or less of respite in any calendar year(~~(~~+~~)~~).

~~((~~3~~) Before January 1, 2016, a long-term care worker employed by a community residential service business; and)~~

(4) ((Registered)) Continuing education is not required for registered nurses, licensed practical nurses, and advanced registered nurse practitioners licensed under chapter 18.79 or 18.80 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

(5) Beginning January 1, 2025, individual providers covered under this section may voluntarily take continuing education and be paid for up to 12 hours of continuing education annually.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-115-0523 What are the training and certification requirements for individual providers? The following chart provides a summary of the training and certification requirements for individual providers. This includes criteria for those providers working limited hours for one person, caring only for one's child, parent, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild including when related by marriage or domestic partnership, providing respite services, or providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs:

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(1) An individual provider who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider (or home care agency long-term care worker) with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).	ARNP, RN, LPN, HCA, NA-C, or other professionals listed in WAC 388-71-0839.	Not required.	Not required.	Not required.	Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required 12 hours under WAC ((388-71-0990 and)) 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. For NA-C and those with special education training, 12 hours is required for each year worked in long-term care.	Required under chapter 246-980 WAC.
(2) An individual provider with specific employment history.	A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the worker's date of hire. WAC 388-71-0839.	Not required.	Not required.	Not required.	12 hours is required for each year worked in long-term care under WAC ((388-71-0990 and)) 388-71-0991.	Not required.
(3) An individual provider.	Hired by the consumer directed employer to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 70 hours under WAC 388-71-0870 and 388-71-0875.	Required. 12 hours under WAC ((388-71-0990 and)) 388-71-0991.	Required under chapter 246-980 WAC.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(4) An individual provider who works limited hours for one person.	An individual provider employed by the consumer directed employer providing 20 hours or less of nonrespite care for one person per calendar month and does not meet the criteria in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.
(5) An individual who provides respite services and works 300 hours or less in any calendar year.	(a) An individual providing respite care and works no more than 300 hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section. (b) An individual providing respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. Nine hours under WAC 388-71-0890.	Not required.	Not required.
(6) An individual provider caring only for the provider's (biological, step, or adoptive) adult child.	An individual providing care only for the provider's adult child that receives services through the developmental disabilities administration and not exempt under subsection (1) or (2) of this section.	Required. Two hours (per) under WAC 388-71-0895.	Required. Three hours under WAC 388-71-0895.	Required. Seven hours under WAC 388-71-0890.	Not required until January 1, 2027, then 12 hours for each year worked in long-term care under WAC 388-71-0991.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
<p>((7)) An individual provider caring only for the provider's biological, step, or adoptive child, or parent.</p>	<p>An individual providing care only to the provider's child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>12 hours is required for each year worked in long-term care for an individual provider caring only for the individual's biological, step, or adoptive parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for the individual's biological, step, or adoptive child under WAC 388-71-1001.</p>	<p>Not required.))</p>
<p>((8)) (7) An individual provider caring only for the individual provider's <u>parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.</u></p>	<p>An individual providing care only for the individual provider's <u>parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.</u></p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>Not required <u>until January 1, 2027, then 12 hours for each year worked in long-term care under WAC 388-71-0991.</u></p>	<p>Not required.</p>
<p>((9)) (8) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.</p>	<p>A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs who is not exempt in subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>12 hours is required for each year worked in long-term care under WAC ((388-71-0990 and)) 388-71-0991.</p>	<p>Not required.</p>

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-71-0990 Who is required to complete continuing education training, how many hours are required each year, and under what circumstances may the long-term care worker not be paid?

WSR 24-19-062
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed September 16, 2024, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-07-054.

Title of Rule and Other Identifying Information: WAC 388-828-4060
What subscales are contained in the support needs scale?, 388-828-4200
What activities are assessed in the home living activities subscale of
the support needs scale?, 388-828-4240 What activities are assessed in
the lifelong learning activities subscale of the support needs scale?,
388-828-4260 What activities are assessed in the work activities sub-
scale of the support needs scale?, 388-828-4280 What activities are
assessed in the health and safety activities subscale of the support
needs scale?, 388-828-4320 What activities are assessed in the advoca-
cy activities subscale?, 388-828-4380 What exceptional behavioral sup-
port activities are evaluated to assess your behavioral support
needs?, 388-828-4400 How does DDD DDA determine if you meet the eligi-
bility requirements for ICF/IID level-of-care if you are age sixteen
or older?, 388-828-4440 How does DDD DDA determine your SIS support
needs index percentile ranking?, 388-828-5460 How does DDA determine
your ADL support needs score if you are age sixteen or older?,
388-828-5800 How does DDA determine your interpersonal support needs
score if you are age sixteen or older?, 388-828-5900 How does DDA de-
termine your mobility acuity level if you are age sixteen or older?,
388-828-8060 How does DDA determine which health and welfare needs
must be addressed in your person-centered service plan if you are age
sixteen or older?, 388-828-9255 How does DDA determine your employment
acuity score for completing tasks with acceptable speed?, 388-828-9260
How does DDA determine your employment acuity score for completing
tasks with acceptable quality?, 388-828-9560 How does the residential
algorithm determine your daily support needs score?, 388-828-9580 How
does the residential algorithm determine your mid-frequency support
needs score?, 388-828-9660 How does the residential algorithm calcu-
late your daily critical support time?, 388-828-9670 How does the res-
idential algorithm calculate your mid-frequency critical support
time?, 388-828-9680 How does the residential algorithm determine your
weekly critical support time?, and other related rules as may be re-
quired.

Hearing Location(s): On November 5, 2024, at 10:00 a.m., virtual-
ly via Microsoft Teams or call in. See the department of social and
health services (DSHS) website at [https://www.dshs.wa.gov/sesa/rpau/
proposed-rules-and-public-hearings](https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings) for the most current information.

Date of Intended Adoption: No earlier than November 6, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box
45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov,
fax 360-664-6185, beginning noon on September 18, 2024, by 5:00 p.m.
on November 5, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza,
rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay
service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on October 21,
2024.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The developmental disabilities adminis-

tration (DDA) is planning to amend sections in chapter 388-828 WAC (the supports intensity scale (SIS-A) portions of the DDA assessment) to align with updates the American Association of Intellectual and Developmental Disabilities (AAIDD) has made to its SIS-A assessment tool, Second Edition. Aligning with AAIDD's Second Edition will not impact the algorithm.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.16.050.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Amanda Beller, P.O. Box 45310, Olympia, WA 98504-5310, 360-742-9492.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules relate only to client medical or financial eligibility, which is exempt from preparation of a cost-benefit analysis under RCW 34.05.328 (5) (b) (vii).

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

Scope of exemption for rule proposal:

Is fully exempt.

September 13, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5053.2

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4060 What subscales are contained in the support needs scale? The support needs scale contains the following subscales:

- (1) Home living activities;
- (2) Community living activities;
- (3) Health and safety activities;
- (4) Lifelong learning activities;
- ~~((4) Employment)~~ (5) Work activities;
- ~~((5) Health and safety activities; and)~~
- (6) Social activities; and
- (7) Advocacy activities.

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-4200 What activities are assessed in the home living activities subscale of the support needs scale? The home living activities subscale measures your personal support needs for the following home living activities:

#	Home living activities	Type of support					Frequency of support					Daily support time					Raw score
		0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A1	((Operating home appliances/electronics)) Bathing and taking care of personal hygiene and grooming needs	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A2	((Bathing and taking care of personal hygiene and grooming needs)) Dressing	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A3	Using the toilet	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A4	((Dressing)) Preparing food	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A5	((Preparing)) Eating food	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A6	((Eating food)) Taking care of clothes, including laundering	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A7	((Taking care of clothes, including laundering)) Housekeeping and cleaning	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A8	((Housekeeping and cleaning)) Operating home appliances/electronics	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A9	Using currently prescribed equipment or treatment	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	

Total raw score for home living activities:

* = Score is not an option per AAIDD.

Note: Question A9 is a question added by DDA. It is for informational purposes only and is not used to calculate scores or levels for service determination.

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-4240 What activities are assessed in the lifelong learning activities subscale of the support needs scale? The lifelong learning activities subscale measures your personal support needs for the following lifelong learning activities:

#	Lifelong learning activities	Type of support					Frequency of support					Daily support time					Raw score
		0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
((C1)) D1	Learning and using problem-solving strategies	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
((C2)) D2	Learning functional academics (reading signs, counting change, etc.)	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
((C3)) D3	Learning health and physical education skills	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
((C4)) D4	Learning self-determination skills	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	

#	Lifelong learning activities	Type of support					Frequency of support					Daily support time					Raw score
(C5) D5	Learning self-management strategies	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
(C6) D6	Participating in training/educational decisions	0	1	2	3	4	0	1	2	3	*	0	1	2	3	*	
(C7) D7	Accessing training/educational settings	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
(C8) D8	Interacting with others in learning activities	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
(C9) D9	Using technology for learning	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
Total raw score for lifelong learning activities:																	
* = Score is not an option per AAIDD.																	

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-4260 What activities are assessed in the ~~((employment))~~ work activities subscale of the support needs scale? The ~~((employment))~~ work activities subscale measures your personal support needs for the following ~~((employment))~~ work activities:

#	((Employment)) Work activities	Type of support					Frequency of support					Daily support time					Raw score
(D1) E1	Learning and using specific job skills	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
(D2) E2	((Accessing/receiving job/task accommodations)) Completing work-related tasks with acceptable speed	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
(D3) E3	((Interacting with co-workers)) Completing work-related tasks with acceptable quality	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
(D4) E4	((Interacting with supervisors/coaches)) Changing job assignments	0	1	2	3	4	0	1	2	((3)) *	0	1	2	3	4		
(D5) E5	((Completing work-related tasks with acceptable speed)) Interacting with co-workers	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
(D6) E6	((Completing work-related tasks with acceptable quality)) Interacting with supervisors/coaches	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
(D7) E7	((Changing job assignments)) Accessing/receiving job/task accommodations	0	1	2	3	4	0	1	2	((*) 3	0	1	2	3	4		
(D8) E8	Seeking information and assistance from an employer	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
Total raw score for employment activities:																	
* = Score is not an option per AAIDD.																	

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-4280 What activities are assessed in the health and safety activities subscale of the support needs scale? The health and safety activities subscale measures your personal support needs for the following health and safety activities:

#	Health and safety activities	Type of support					Frequency of support					Daily support time					Raw score
(E1)) C1	Taking medications	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
(E2)) C2	Ambulating and moving about	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
(E3)) C3	Avoiding health and safety hazards	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
(E4)) C4	Obtaining health care services	0	1	2	3	4	0	1	2	3	4	0	1	2	*	*	
(E5)) C5	Learning how to access emergency services	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
(E6)) C6	Maintaining a nutritious diet	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
(E7)) C7	Maintaining physical health and fitness	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
(E8)) C8	Maintaining emotional well-being	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
Total raw score for health and safety activities:																	
* = Score is not an option per AAIDD.																	

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-4320 What activities are assessed in the ~~((supplemental protection and))~~ advocacy activities subscale? The ~~((supplemental protection and))~~ advocacy activities subscale measures your personal support needs for the following ~~((protection and))~~ advocacy activities:

#	((Protection and)) Advocacy activities	Type of support					Frequency of support					Daily support time					Raw score
G1	((Advocating for self)) Making choices and decisions	0	1	2	3	4	0	1	2	3	((*)) 4	0	1	2	3	4	
G2	((Making choices and decisions)) Advocating for self	0	1	2	3	4	0	1	2	3	((4)) *	0	1	2	3	4	
G3	((Protecting self from exploitation)) Managing money and personal finances	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G4	((Exercising legal/civic responsibilities)) Protecting self from exploitation	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G5	((Belonging to and participating in self advocacy/ support organizations)) Exercising legal/civic responsibilities	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	

#	((Protection and)) Advocacy activities	Type of support					Frequency of support					Daily support time					Raw score
G6	((Obtaining legal services)) <u>Belonging to and participating in self-advocacy/support organizations</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G7	((Managing money and personal finances)) <u>Obtaining legal services</u>	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G8	Advocating for others	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
Total raw score for protection and advocacy activities:																	
* = Score is not an option for AAIDD.																	

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-4380 What exceptional behavioral support activities are evaluated to assess your behavioral support needs? The SIS exceptional behavioral support needs scale measures your personal support needs for the following behaviors:

#	Behavioral supports needed	No support needed	Some support Needed	Extensive support needed
1.	Prevention of emotional outbursts	0	1	2
2.	Prevention of assault or injury to others	0	1	2
3.	Prevention of property destruction (e.g., fire setting, breaking furniture)	0	1	2
4.	Prevention of stealing	0	1	2
5.	Prevention of self-injury	0	1	2
6.	Prevention of self-neglect	0	1	2
((6)) 7.	Prevention of suicide attempts	0	1	2
((7)) 8.	Prevention of PICA (ingestion of inedible substances)	0	1	2
((8)) 9.	Prevention of nonaggressive but inappropriate behavior (e.g., exposes self in public, exhibitionism, inappropriate touching, ((e)) gesturing, talk, or advances)	0	1	2
((9)) 10.	Prevention of sexual aggression	0	1	2
((10)) 11.	Prevention of substance abuse	0	1	2
((11)) 12.	Prevention of wandering	0	1	2
((12)) 13.	Maintenance of mental health treatments (e.g., prevent disruption of mental health care)	0	1	2
((13)) 14.	Managing attention-seeking behavior*	0	1	2
((14)) 15.	Managing uncooperative behavior*	0	1	2
((15)) 16.	Managing agitated/over reactive behavior*	0	1	2
((16)) 17.	Managing obsessive/repetitive behavior*	0	1	2
((17)) 18.	Prevention of other serious behavior problem(s) - Specify:	0	1	2
Subtotal scores of 1s and 2s:				

#	Behavioral supports needed	No support needed	Some support Needed	Extensive support needed
Add subtotals scores for 1s and 2s for total exceptional behavioral support needs scores:				
* ((#13-16)) #14-17 are questions added by DDA. They are used as part of the DDA behavior acuity scale and are not used to calculate SIS percentiles.				

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-4400 How does DDA determine if you meet the eligibility requirements for ICF/IID level-of-care if you are age ((~~sixteen~~)) 16 or older? If you are age ((~~sixteen~~)) 16 or older, DDA determines you to be eligible for ICF/IID level-of-care from your SIS scores. Eligibility for ICF/IID level-of-care requires that your scores meet at least one of the following:

- (1) You have a percentile rank over nine percent for three or more of the six subscales in the SIS support needs scale;
- (2) You have a percentile rank over ((~~twenty-five percent~~)) 25% for two or more of the six subscales in the SIS support needs scale;
- (3) You have a percentile rank over ((~~fifty percent~~)) 50% in at least one of the six subscales in the SIS support needs scale;
- (4) You have a support score of one or two for any of the questions listed in the SIS exceptional medical support needs scale;
- (5) You have a support score of one or two for at least one of the following items in the SIS exceptional behavior support needs scale:
 - (a) Prevention of assaults or injuries to others;
 - (b) Prevention of property destruction (e.g., fire setting, breaking furniture);
 - (c) Prevention of self-injury;
 - (d) Prevention of PICA (ingestion of inedible substances);
 - (e) Prevention of suicide attempts;
 - (f) Prevention of sexual aggression; or
 - (g) Prevention of wandering.
- (6) You have a support score of two for any of the questions listed in the SIS exceptional behavior support needs scale; or
- (7) You meet or exceed any of the qualifying scores for one or more of the following SIS questions:

Question # of SIS support needs scale	Text of question	Your score for "Type of support" is:	And your score for "Frequency of support" is:
((A2)) <u>A1</u>	Bathing and taking care of personal hygiene and grooming needs	2 or more	4
		3 or more	2
((A3)) <u>A2</u>	((Using the toilet)) <u>Dressing</u>	2 or more	4
		3 or more	2
((A4)) <u>A3</u>	((Dressing)) <u>Using the toilet</u>	2 or more	4
		3 or more	2
((A5)) <u>A4</u>	Preparing food	2 or more	4
		3 or more	2
((A6)) <u>A5</u>	Eating food	2 or more	4
		3 or more	2

Question # of SIS support needs scale	Text of question	Your score for "Type of support" is:	And your score for "Frequency of support" is:
((A7)) <u>A6</u>	Taking care of clothes, including laundering	2 or more	2 or more
		3 or more	1
((A8)) <u>A7</u>	Housekeeping and cleaning	2 or more	2 or more
		3 or more	1
B6	Shopping and purchasing goods and services	2 or more	2 or more
		3 or more	1
((C1	Learning and using problem-solving strategies	2 or more	3 or more
		3 or more	2
C5	Learning self-management strategies	2 or more	3 or more
		3 or more	2))
((E1)) <u>C1</u>	Taking medications	2 or more	4
		3 or more	2
((E2)) <u>C2</u>	Ambulating and moving about	2 or more	4
		3 or more	2
((E3)) <u>C3</u>	Avoiding health and safety hazards	2 or more	3 or more
		3 or more	2
((E6)) <u>C6</u>	Maintaining a nutritious diet	2 or more	2 or more
		3 or more	1
((E8)) <u>C8</u>	Maintaining emotional well-being	2 or more	3 or more
		3 or more	2
<u>D1</u>	Learning and using problem-solving strategies	2 or more	3 or more
		3 or more	2
<u>D5</u>	Learning self-management strategies	2 or more	3 or more
		3 or more	2
F1	Using appropriate social skills	2 or more	3 or more
		3 or more	2
((G7)) <u>G3</u>	Managing money and personal finances	2 or more	2 or more
		3 or more	1

AMENDATORY SECTION (Amending WSR 13-01-080, filed 12/18/12, effective 1/18/13)

WAC 388-828-4440 How does ~~((DDD))~~ DDA determine your SIS support needs index percentile ranking? (1) ~~((DDD))~~ DDA determines your SIS support needs index percentile ranking by adding together the standard scores (WAC 388-828-4420) for the following supports intensity scale assessment subscales:

- (a) Home living activities in WAC 388-828-4200.
- (b) Community living activities in WAC 388-828-4220.
- (c) Health and safety activities in WAC 388-828-4280.
- (d) Lifelong learning activities in WAC 388-828-4240.
- ~~((d) Employment))~~ (e) Work activities in WAC 388-828-4260.
- ~~((Health and safety activities in WAC 388-828-4280.~~
- ~~(f))~~ Social activities in WAC 388-828-4300.

(2) Your standard scores for the above scales are added together to determine the sum of the standard scores.

(3) The ((supplemental protection and)) advocacy activities scale, and the exceptional medical and behavioral supports scales are not used in determining your support needs index percentile ranking.

(4) The sum of the standard scores is converted to your support needs index percentile ranking using the following table:

If the sum of the standard scores is:	Your support needs index percentile is:
≥91	>99
90	99
89	99
88	99
87	98
86	98
85	97
84	97
83	96
82	95
81	95
80	94
79	93
78	92
77	91
76	89
75	87
74	86
73	84
72	82
71	81
70	77
69	75
68	73
67	70
66	68
65	65
64	63
63	58
62	55
61	53
60	50
59	47
58	45
57	39
56	37
55	35
54	32
53	30
52	27
51	25

If the sum of the standard scores is:	Your support needs index percentile is:
50	23
49	19
48	18
47	16
46	14
45	13
44	13
43	9
42	8
41	7
40	6
39	5
38	5
37	4
36	3
35	3
34	2
33	2
32	1
31	1
30	1
≤29	<1

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-5460 How does DDA determine your ADL support needs score if you are age ((~~sixteen~~) 16 or older? (1) If you are age ((~~sixteen~~) 16 or older, your ADL support needs score is the total adjusted "Type of support" scores from the following SIS questions:

ADL questions from the SIS assessment in WAC 388-828-4200 and 388-828-4280	
Question #	Text of ADL questions:
((A2)) <u>A1</u>	Bathing and taking care of personal hygiene and grooming needs
<u>A2</u>	Dressing
A3	Using the toilet
((A4	Dressing))
((A6)) <u>A5</u>	Eating food
((E1)) <u>C1</u>	Taking medications
((E2)) <u>C2</u>	Ambulating and moving about

(2) If your "Frequency of support" score for a SIS ADL question is zero or one, adjust your "Type of support" score for that question to zero.

(3) If your "Frequency of support" score for a SIS ADL support question is two, three, or four, no adjustment is needed to your "Type of support" score.

Example:

SIS ADL Questions	Text of SIS ADL Questions	If your "Frequency of Support" score is:	And your "Type of Support" score is:	Then your adjusted "Type of Support" score is:
((A2)) <u>A1</u>	Bathing and taking care of personal hygiene and grooming needs	1	2	0
<u>A2</u>	Dressing	<u>3</u>	<u>3</u>	<u>3</u>
A3	Using the toilet	3	3	3
((A4 <u>Dressing</u>		<u>3</u>	<u>3</u>	<u>3</u>)
((A6)) <u>A5</u>	Eating food	1	2	0
((E1)) <u>C1</u>	Taking medications	3	2	2
((E2)) <u>C2</u>	Ambulating and moving about	0	0	0
Your SIS ADL support needs score:				8

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-5800 How does DDA determine your interpersonal support needs score if you are age ~~((sixteen))~~ 16 or older? If you are age ~~((sixteen))~~ 16 or older, your interpersonal support needs score is determined by adding your raw scores to the following SIS questions:

Interpersonal support needs questions from the SIS assessment	
Question #	Text of interpersonal support needs questions:
B7	Interacting with community members
((C8)) <u>D8</u>	Interacting with others in learning activities
((D3)) <u>E5</u>	Interacting with co-workers
((D4)) <u>E6</u>	Interacting with supervisors/coaches
((D8)) <u>E8</u>	Seeking information and assistance from an employer
F1	Using appropriate social skills
F3	Socializing outside the household
F6	Socializing within the household
F7	Communicating with others about personal needs

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-5900 How does DDA determine your mobility acuity level if you are age ~~((sixteen))~~ 16 or older? If you are age ~~((sixteen))~~ 16 or older, your mobility acuity level is determined by your scores to question ~~((E2))~~ C2 "Ambulating and moving about" in WAC 388-828-4280 using the following table:

If your score for "Frequency of Support" is:	And your score for "Type of Support" is:	Then your Mobility Acuity Level is:	Value
3 or 4	4	High	3
3 or 4	3	Medium	2
If your raw score for question ((E2)) C2 is 5 or more and you do not meet the criteria for a high or medium mobility acuity level		Low	1
If your raw score for question ((E2)) C2 is 4 or less		None	0

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-8060 How does DDA determine which health and welfare needs must be addressed in your person-centered service plan if you are age ((sixteen)) 16 or older? (1) If you are age ((sixteen)) 16 or older and receiving DDA HCBS waiver services or reside in a state-only residential setting, DDA uses the following table to determine the health and welfare needs that must be addressed in your person-centered service plan:

#	SIS Activity	DDA must address in the PSCP if your Type of Support score is:	Health and Welfare Category
((A1))	Operating home appliances	3 or more	Home Living
((A2)) <u>A1</u>	Bathing and taking care of personal hygiene and grooming needs	3 or more	
<u>A2</u>	Dressing	3 or more	
A3	Using the toilet	3 or more	
((A4))	Dressing	3 or more	
((A5)) <u>A4</u>	Preparing food	3 or more	
((A6)) <u>A5</u>	Eating food	3 or more	
((A7)) <u>A6</u>	Taking care of clothes, including laundering	3 or more	
((A8)) <u>A7</u>	Housekeeping and cleaning	3 or more	
<u>A8</u>	Operating home appliances	3 or more	
A9	Using currently prescribed equipment or treatment	3 or more	Community Living
B1	Getting from place to place throughout the community (transportation)	2 or more	
B2	Participating in recreation/leisure activities in the community	2 or more	
B4	Accessing public buildings and settings	2 or more	
B5	Using public services in the community	2 or more	
B6	Shopping and purchasing goods and services	2 or more	

#	SIS Activity	DDA must address in the PSCP if your Type of Support score is:	Health and Welfare Category
B7	Interacting with community members	4	
B8	Going to visit friends and family	4	
<u>C1</u>	<u>Taking medications</u>	<u>2 or more</u>	<u>Health and Safety</u>
<u>C2</u>	<u>Ambulating and moving about</u>	<u>3 or more</u>	
<u>C3</u>	<u>Avoiding health and safety hazards</u>	<u>3 or more</u>	
<u>C4</u>	<u>Obtaining health care services</u>	<u>3 or more</u>	
<u>C6</u>	<u>Maintaining a nutritious diet</u>	<u>3 or more</u>	
<u>C7</u>	<u>Maintaining physical health and fitness</u>	<u>3 or more</u>	
((D3)) <u>E5</u>	Interacting with co-workers	3 or more	
((D4)) <u>E6</u>	Interacting with supervisors and or coaches	3 or more	
((E1))	Taking medications	2 or more	<u>Health and Safety</u>
E2	Ambulating and moving about	3 or more	
E3	Avoiding health and safety hazards	3 or more	
E4	Obtaining health care services	3 or more	
E6	Maintaining a nutritious diet	3 or more	
E7	Maintaining physical health and fitness	3 or more	
F2	Participating in recreation/leisure activities with others	2 or more	
F4	Making and keeping friends	4	
F6	Socializing within the household	4	
((G2)) <u>G1</u>	Making choices and decisions	2 or more	((Protection and)) <u>Advocacy Activities</u>
G3	((Protecting self from exploitation)) <u>Managing money and personal finances</u>	2 or more	
((G7)) <u>G4</u>	((Managing money and personal finances)) <u>Protecting self from exploitation</u>	2 or more	

(2) If you have a support score of one or more for any of the questions in the SIS exceptional medical support needs scale, DDA must address your support need using the medical supports category.

(3) If you have a support score of one or more for any of the questions in the SIS exceptional behavior support needs scale, DDA must address your support need using the behavior supports category.

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-9255 How does DDA determine your employment acuity score for completing tasks with acceptable speed? DDA determines your employment acuity score for completing tasks with acceptable speed by using your "type of support" score for question "~~((D5))~~ E2" in WAC 388-828-4260 and multiplying it by 0.06285.

Example: A "type of support" score of 3 (partial physical assistance) is multiplied by 0.06285 resulting in an employment acuity score for completing tasks with acceptable speed of 0.18855.

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-9260 How does DDA determine your employment acuity score for completing tasks with acceptable quality? DDA determines your employment acuity score for completing tasks with acceptable quality by using your "type of support" score for question "~~(D6)~~ E3" in WAC 388-828-4260 and multiplying it by 0.05418.

Example: A "type of support" score of 2 (verbal/gestural prompting) is multiplied by 0.05418 resulting in an employment acuity score for completing tasks with acceptable quality of 0.10836.

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-9560 How does the residential algorithm determine your daily support needs score? The residential algorithm determines that you have daily support needs if you meet or exceed all of the qualifying scores for one or more of the following activities from the SIS:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your score for type of support is:	And your score for frequency of support is:	And your daily support time is:
((A2)) <u>A1</u> : Bathing and taking care of personal hygiene and grooming needs	2 or more	3 or more	1 or more
<u>A2</u> : Dressing	<u>2 or more</u>	<u>3 or more</u>	<u>1 or more</u>
A3: Using the toilet	2 or more	3 or more	1 or more
((A4: Dressing	2 or more	3 or more	1 or more))
((A6)) <u>A5</u> : Eating food	2 or more	3 or more	1 or more
A9: Using currently prescribed equipment or treatment	2 or more	3 or more	1 or more
((E1)) <u>C1</u> : Taking medication	2 or more	3 or more	1 or more
((E2)) <u>C2</u> : Ambulating and moving about	3 or more	3 or more	1 or more
((E3)) <u>C3</u> : Avoiding health and safety hazards	1 or more	3 or more	1 or more
Or			
Any combination of 3 of the SIS activities listed above (<u>A1</u> , A2, A3, ((A4, A6)) <u>A5</u> , A9, ((E1, E2, E3)) <u>C1</u> , C2, C3)	1 or more	3 or more	1 or more

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-9580 How does the residential algorithm determine your mid-frequency support needs score? The residential algorithm determines that you have mid-frequency support needs if you meet one of the following three conditions:

(1) You meet or exceed all of the qualifying scores for one or more of the following activities from the SIS assessment:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)			
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:
((A5)) <u>A4</u> : Preparing food	2 or more	2 or more	2 or more
((A8)) <u>A7</u> : Housekeeping and cleaning	3 or more	3 or more	2 or more
B2: Participating in recreational/leisure activities in community settings	3 or more	2 or more	2 or more
B7: Interacting with community members	3 or more	2 or more	2 or more
((G3)) <u>G4</u> : Protecting self from exploitation	2 or more	2 or more	2 or more

(2) Or you meet or exceed all of the qualifying scores for four or more of the following activities from the SIS assessment:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)				
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Score if you meet or exceed criteria
((A2)) <u>A1</u> : Bathing and taking care of personal hygiene and grooming needs	1 or more	2 or more	1 or more	
<u>A2</u> : Dressing	<u>1 or more</u>	<u>2 or more</u>	<u>1 or more</u>	
A3: Using the toilet	1 or more	2 or more	1 or more	
((A4: Dressing	1 or more	2 or more	1 or more	
((A5)) <u>A4</u> : Preparing food	1 or more	2 or more	1 or more	
((A6)) <u>A5</u> : Eating food	1 or more	2 or more	1 or more	
((A8)) <u>A7</u> : Housekeeping and cleaning	1 or more	2 or more	1 or more	
A9: Using currently prescribed equipment and medications	1 or more	2 or more	1 or more	
B2: Participating in recreational/leisure activities in community settings	1 or more	2 or more	1 or more	
B7: Interacting with community members	1 or more	2 or more	1 or more	
((E1)) <u>C1</u> : Taking medications	1 or more	2 or more	1 or more	
((E2)) <u>C2</u> : Ambulating and moving about	1 or more	2 or more	1 or more	
((E3)) <u>C3</u> : Avoiding health and safety hazards	1 or more	2 or more	1 or more	
((G3)) <u>G4</u> : Protecting self from exploitation	1 or more	2 or more	1 or more	
Total of all questions where criteria is met or exceed =				Sum of scores entered

(3) Or you meet the qualifying scores for the following SIS activities and your total weekly critical support time score exceeds ~~((ten))~~ 10 hours:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support score is:	And your frequency of support score is:	And your daily support time score is:	Your weekly critical support time is:	Enter one time for each qualifying SIS activity
((A7)) A6: Taking care of clothes, including laundering	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B5: Using public services in the community	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
B6: Shopping and purchasing goods and services	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
F2: Participating in recreation/leisure activities with others	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
F8: Engaging in volunteer work	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
((G7)) G3: Managing money and personal finances	1 or more	2 or more	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
Mid-frequency support needs weekly critical support time total =					Sum of times entered

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-9660 How does the residential algorithm calculate your daily critical support time? The residential algorithm uses the following chart to calculate your daily critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
((A2)) A1: Bathing and taking care of personal hygiene and grooming needs	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
		4	4	5	
			0	0	
			1	.25	
			2	1	
		3	3	3	
			4	5	
			0	0	
			1	.25	
		2	2	1	
3	3				
4	5				
0	0				
A2: Dressing	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
		4	4	5	
			0	0	
			1	.25	
			2	1	
		3	3	3	
			4	5	
			0	0	
			1	.25	
		2	2	1	
3	3				
4	5				
0	0				
A3: Using the toilet	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0 or more	0	
		3	0	0	
			1	.25	
			2	1	
			3	3	
		4	4	5	
			0	0	
			1	.25	
			2	1	
		3	3	3	
			4	5	
			0	0	
			1	.25	
		2	2	1	
3	3				
4	5				
0	0				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
((A4: Dressing	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0 or more	0				
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	4	5				
			0	0				
			1	.25				
			2	1				
		((A6) A5: Eating food	1 or more	0		0 or more	0	
				1		0 or more	0	
				2		0 or more	0	
				3		0	0	
						1	.25	
2	1							
3	3							
4	4			5				
	0			0				
	1			.25				
	2			1				
A9: Using currently prescribed equipment or treatment	1 or more			0	0 or more	0		
				1	0 or more	0		
				2	0 or more	0		
				3	0	0		
					1	.25		
		2	1					
		3	3					
		4	4	5				
			0	0				
			1	.25				
			2	1				
			3	3				
			4	5				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity:	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
((E1)) C1: Taking medications	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0 or more	0				
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	4	5				
			0	0				
			1	.25				
			2	1				
		((E2)) C2: Ambulating and moving about	1 or more	0		0 or more	0	
				1		0 or more	0	
				2		0 or more	0	
				3		0	0	
						1	.25	
2	1							
3	3							
4	4			5				
	0			0				
	1			.25				
	2			1				
((E3)) C3: Avoiding health and safety hazards	1 or more			0	0 or more	0		
				1	0 or more	0		
				2	0 or more	0		
				3	0	0		
					1	.25		
		2	1					
		3	3					
		4	4	5				
			0	0				
			1	.25				
			2	1				
			3	3				
			4	5				

Daily critical support time score =

Sum of all times entered.

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-9670 How does the residential algorithm calculate your mid-frequency critical support time? The residential algorithm uses the following chart to calculate your mid-frequency critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
((A2)) <u>A1</u> : Bathing and taking care of personal hygiene and grooming needs*	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
		3	0 or more	0				
			4	0 or more		0		
		<u>A2</u> : Dressing*	1 or more	<u>0</u>		<u>0 or more</u>	<u>0</u>	
				<u>1</u>		<u>0 or more</u>	<u>0</u>	
<u>2</u>	<u>0</u>			<u>0</u>				
	<u>1</u>			<u>.25</u>				
	<u>2</u>			<u>1</u>				
	<u>3</u>			<u>3</u>				
<u>3</u>	<u>0 or more</u>			<u>0</u>				
	<u>4</u>			<u>0 or more</u>	<u>0</u>			
A3: Using the toilet	1 or more			0	0 or more	0		
				1	0 or more	0		
				2	0	0		
					1	.25		
					2	1		
					3	3		
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	0	0				
			1	.25				
			2	1				
			3	3				
		4	0	0				
			4	5				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
((A4)) <u>Dressing*</u>	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
		3	4	5				
			0 or more	0				
((A5)) <u>A4: Preparing food</u>	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
		3	4	5				
			0	0				
			1	.25				
			2	1				
		4	3	3				
			4	5				
			0	0				
			1	.25				
		((A6)) <u>A5: Eating food*</u>	1 or more	0		0 or more	0	
				1		0 or more	0	
2	0			0				
	1			.25				
	2			1				
	3			3				
3	4			5				
	0 or more			0				
4	0 or more			0				
	0			0				
((A8)) <u>A7: Housekeeping and cleaning</u>	1 or more			0	0 or more	0		
				1	0 or more	0		
		2	0	0				
			1	.25				
			2	1				
			3	3				
		3	4	5				
			0 or more	0				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
		4	0 or more	0				
A9: Using currently prescribed equipment or treatment*	1 or more	0	0 or more	0				
		1	0 or more	0				
			0	0				
			1	.25				
			2	1				
			3	3				
		2	4	5				
			0 or more	0				
			0 or more	0				
			0 or more	0				
B2: Participating in recreation/leisure activities in community	1 or more	0	0 or more	0				
		1	0 or more	0				
			0	0				
			1	.25				
			2	1				
			3	3				
		2	4	5				
			0	0				
			1	.25				
			2	1				
		3	3	3				
			4	5				
			0	0				
			1	.25				
		4	2	1				
			3	3				
			4	5				
			0	0				
		B7: Interacting with community members	1 or more	0		0 or more	0	
				1		0 or more	0	
0	0							
1	.25							
2	1							
3	3							
2	4			5				
	0			0				
	1			.25				
	2			1				
3	3			3				
	4			5				
	0			0				
	1			.25				
4	2			1				
	3			3				
	4	5						
	0	0						

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
((E1)) C1: Taking medications*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
((E2)) C2: Ambulating and moving about*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
((E3)) C3: Avoiding health and safety hazards*	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		
		3	0 or more	0	
4	0 or more	0			
((G3)) G4: Protecting self from exploitation	1 or more	0	0 or more	0	
		1	0 or more	0	
		2	0	0	
			1	.25	
			2	1	
			3	3	
		4	5		

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		3	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
Mid-frequency critical support time score =					Sum of all times entered
*Daily support activities that have less than daily support needs are added into the mid-frequency critical support time score.					

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-9680 How does the residential algorithm determine your weekly critical support time? The residential algorithm uses the following chart to calculate your weekly critical support time score:

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)						
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity	
((A7)) <u>A6</u> : Taking care of clothes (including laundering)	1 or more	0	0 or more	0		
			1	0 or more		0
				2		0
		1				.25
		2				1
		3	3	3		
			4	5		
			3	0		0
				1		.25
		2		1		
		3		3		
		4	4	5		
			4	0		0
				1		.25
				2		1
		3		3		
		4	5			

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
B5: Using public services in the community	1 or more	0	0 or more	0				
		1	0 or more	0				
		2	0	0				
			1	.25				
			2	1				
			3	3				
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	0	0				
			1	.25				
			2	1				
			3	3				
		B6: Shopping and purchasing goods and services	1 or more	0		0 or more	0	
				1		0 or more	0	
2	0			0				
	1			.25				
	2			1				
	3			3				
3	0			0				
	1			.25				
	2			1				
	3			3				
4	0			0				
	1			.25				
	2			1				
	3			3				
F2: Participating in recreation/leisure activities with others	1 or more			0	0 or more	0		
				1	0 or more	0		
		2	0	0				
			1	.25				
			2	1				
			3	3				
4	5							

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)								
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity			
		3	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
		4	0	0				
			1	.25				
			2	1				
			3	3				
			4	5				
F8: Engaging in volunteer work	1 or more	0	0 or more	0				
			1	0 or more		0		
				2		0	0	
						1	.25	
		2				1		
		3	3					
		3	0	0				
			1	.25				
			2	1				
			3	3				
		4	0	0				
			1	.25				
			2	1				
			3	3				
		((G7)) G3: Managing money and personal finances	1 or more	0		0 or more	0	
						1	0 or more	
2	0				0			
	1				.25			
	2			1				
	3			3				
3	0			0				
	1			.25				
	2			1				
	3			3				
4	0			0				
	1			.25				
	2			1				
	3			3				

Qualifying Scores from Supports Intensity Scale (per WAC 388-828-4200 through 388-828-4320)					
SIS Activity	If your type of support is:	And your frequency of support score is:	And your daily support time score is:	Then your critical task hours =	Enter one time for each SIS activity
		4	0	0	
			1	.25	
			2	1	
			3	3	
			4	5	
Weekly critical support time score =					Sum of all times entered

WSR 24-20-008

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed September 19, 2024, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-012.

Title of Rule and Other Identifying Information: Clarifying "culturally congruent care" in chapter 246-835 WAC, Birth doula. The department of health (department) is proposing amendments to WAC 246-835-010 and 246-835-025 to update the definition of "culturally congruent care" and to clarify education and training requirements related to "culturally congruent care" and "culturally congruent ancestral practices."

Hearing Location(s): On November 26, 2024, at 2:00 p.m., in person at the Washington State Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or Zoom. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_9S43VRINTjaKZqaRJC BWQw. After registering, you will receive a confirmation email containing information about joining the webinar. The department will be offering a hybrid public hearing. Participants may attend virtually or in person at the physical location. You may also submit comments in writing.

Date of Intended Adoption: December 3, 2024.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, beginning the date and time of this filing, by November 26, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, Program Manager, phone 360-236-2912, TTY 711, email kimboi.shadduck@doh.wa.gov, by November 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to the definition of the term "culturally congruent care" in WAC 246-835-010. The updated definition better reflects the practice of "culturally congruent care" for the birth doula profession. This amendment addresses concerns expressed by the doula community regarding the definition of the term and is the result of consultation with interested individuals and birth doula community organizations.

The department is also proposing amendments to WAC 246-835-025 to provide clarity regarding the training and education requirements in this section. Proposed amendments provide clarity by separating the term "culturally congruent care" from "culturally congruent ancestral practices." The proposed amendments address concerns expressed by interested individuals and groups by clarifying that training related to "culturally congruent care" fulfills the requirements in WAC 246-835-025, as well as training or experience related to "culturally congruent ancestral practices."

Reasons Supporting Proposal: The department is proposing amendments to address concerns expressed by interested parties and groups regarding the definition of "culturally congruent care" and the use of the term in WAC 246-835-025. The department received a petition request for rule making in February of 2024 requesting that the department update the definition of "culturally congruent care." Amending WAC 246-835-025 and the definition could address concerns raised by interested parties by clarifying the practice of "culturally congruent care" and the required competencies for a birth doula seeking state

certification. Without rule making, there would be continued confusion between "culturally congruent care" and "culturally congruent ancestral practices." The proposed rules provide clarity, more accurately reflect what is best practice in the profession and aligns rule language with what the department has done in practice when reviewing applications and providing certifications for birth doulas.

Statutory Authority for Adoption: RCW 18.47.030 and 18.47.800.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not create new requirements for state certified birth doulas. The proposed rule amendments clarify and align with the department's existing practices when evaluating applications. The proposed rules more accurately reflect what the department intends by the rule. The proposed amendments are exempt from a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv) as they only clarify the language of a rule without changing its effect.

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.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules only impact Washington state certified birth doulas not businesses. The proposed rules clarify and align with the department's existing practices when evaluating applications. The proposed rules more accurately reflect what the department intends by the rule.

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. The proposed rules do not apply to businesses.

September 19, 2024
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5436.6

AMENDATORY SECTION (Amending WSR 23-18-048, filed 8/30/23, effective 10/1/23)

WAC 246-835-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Birth doula" or "doula" mean a state-certified birth doula under this chapter.

(2) "Culturally congruent care" means ~~((the care and respect towards families to uphold their cultural practices around birth as the duty of the doula regardless of their identity, as well as assisting families in accessing other doulas from the same background))~~ respecting and upholding a client's cultural practices around birth, regardless of one's own cultural identity. Culturally congruent care includes a birth doula's responsibility to use community resources and networks to help families access other doulas from the same background, religion, culture, and community as ((them)) the client.

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

(4) "Postpartum" means the 12-month period beginning on the last day of pregnancy.

(5) "Secretary" means the secretary of the department of health.

AMENDATORY SECTION (Amending WSR 23-18-048, filed 8/30/23, effective 10/1/23)

WAC 246-835-025 Culturally congruent ancestral practices, training, and education. (1) To apply for a birth doula certification, an applicant shall ~~((complete))~~ demonstrate knowledge of culturally congruent ancestral practices, training, and education that ~~((demonstrates learned familiarity with clients' cultural practices using culturally congruent care related to birth in client communities where the doula may practice. Such))~~ upholds culturally congruent care as defined in WAC 246-835-010(2).

(2) Culturally congruent ancestral training or experience may include, but is not limited to:

(a) ~~((Multicultural, ancestral and culturally congruent care; such as, but not limited to, rebozo use, belly binding, placenta burial, placenta encapsulation, cord burning, lotus birth, development of intuition;~~

~~((b)))~~ History of obstetrics; such as erasure of granny midwives and indigenous birth work;

~~((c)))~~ (b) Trauma-informed care;

~~((d)))~~ (c) Social determinants of health ~~((and));~~

(d) Adverse childhood experiences; or

(e) Other training and education that enhances the applicant's knowledge of culturally congruent care or culturally congruent ancestral practices, training, and education.

~~((2)))~~ (3) Documentation of completion must include:

(a) An attestation that they have successfully completed a training or have experience in one of the categories in subsection ~~((1))~~ (2) of this section; or

(b) A certificate of completion from a relevant training that lists the applicant's name.

WSR 24-20-025

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed September 20, 2024, 12:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-030.

Title of Rule and Other Identifying Information: Adding facility types to the list of opioid prescribing exclusions for dentists. The dental quality assurance commission (commission) is proposing amendments to WAC 246-817-905 to expand the types of patients who are exempt from opioid prescribing rules. The proposed language aligns with the Washington medical commission's (WMC) recently adopted rules to ensure consistency and alignment with best practices.

Hearing Location(s): On December 6, 2024, at 10:00 a.m., at the Washington State Department of Labor and Industries, Room S130, 7273 Linderson Way S.W., Tumwater, WA 98501-5414; or webinar registration. Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone: Zoom link https://us02web.zoom.us/webinar/register/WN_e3tap85EQv6lZbufqDEdpA. After registering you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 6, 2024.

Submit Written Comments to: Debbie Gardner, Program Manager, 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 December 2, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Debbie Gardner, program manager, phone 360-236-4893, fax 360-236-2901, TTY 771 [711], email dental@doh.wa.gov, by November 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On March 1, 2022, the commission received a rule-making petition requesting adding residential habilitation centers (RHC) to the list of exclusions for the opioid prescribing rules. WMC received a similar petition and recently adopted opioid prescribing exclusion rules. The commission works to remain consistent with WMC rules, as dentists and physicians occasionally provide care in the same settings. Furthermore, striving for consistency with WMC makes rules easier for licensees to understand and comply with in the complex health care regulatory environment.

As part of WMC's rule making for ESHB 1427 (chapter 297, Laws of 2017), codified as RCW 18.71.800, they received comments that adhering to the opioid prescribing rules for patients admitted to long term acute care (LTAC) and nursing homes, is onerous. Specifically, the rules require a history and physical as well as a check of the prescription monitoring program be completed prior to prescribing opioids. It has been stated that patients transferred to LTACs and nursing homes had a history and physical while in the previous facility and that practitioners in LTACs and nursing homes can rely on that assessment.

Inpatient hospital patients are currently exempt from the opioid prescribing rules. WMC and commission recognize that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment. WMC also received a comment regarding patients in RHCs that they are also similarly situated to LTAC and nurs-

ing home patients. They received a similar comment about residential treatment facilities (RTF), that stated RTFs are similar to RHCs except the stay at an RTF is usually short term. As such, the commission is also exempting patients in RHCs and RTFs.

Exempting patients in LTACs, nursing homes, RHCs, and RTFs from the opioid rules simply allows the practitioners in these facilities to continue the patient's pain medications without having to wait for a physician to perform a history and physical. It is standard for a nursing home or LTAC to have a physician conduct a history and physical within 30 days of admission. Exempting patients in nursing homes and LTACs from the opioid rules does not exempt a dentist at these facilities from complying with the applicable standard of care. The dentist would be expected to conduct a history and dental assessment to assess the patient's functioning within a short time after admission. The LTAC is mainly for patients who were in intensive care in the hospital. These are sick patients in need of intensive care for an extended period of time.

Reasons Supporting Proposal: RCW 18.32.800 charges the commission with adopting rules establishing requirements for prescribing opioid drugs. The proposed rule amendments meet the intent of the underlying statutes by establishing additional exemptions for prescribing opioid drugs in WAC 246-817-905. The exemptions for patients in certain health care settings allow for the dentists treating them to seamlessly continue these patients' opioid regime. Rule making is appropriate to promote a clear, consistent framework for practitioners who prescribe opioid drugs. The proposed rules maintain patient safety, while encouraging cross-profession cohesion, and are responsive to the need to increase statewide efforts to ensure proper prescribing and use of opioids.

Statutory Authority for Adoption: RCW 18.32.0365, 18.32.800, and 18.130.050.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Gardner, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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 Debbie Gardner, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 771 [711], email dental@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 rule does not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 13, 2024
Bryan Swanson, DDS
Dental Commission Chair

OTS-5615.1

AMENDATORY SECTION (Amending WSR 19-02-043, filed 12/26/18, effective 1/26/19)

WAC 246-817-905 Exclusions. WAC 246-817-901 through 246-817-980 do not apply to:

(1) The treatment of patients with cancer-related pain. Cancer-related pain means pain that is unpleasant, persistent, subjective sensory and emotional experience associated with actual or potential tissue injury or damage or described in such terms and is related to cancer or cancer treatment that interferes with usual functioning;

(2) The provision of palliative, hospice, or other end-of-life care;

~~(3) ((The treatment of inpatient hospital patients. Inpatient means a person who has been admitted to the hospital for more than twenty-four hours; or~~

~~(4))~~ The provision of procedural medications;

(4) The treatment of patients who have been admitted to any of the following facilities for more than 24 hours:

(a) Acute care hospitals licensed under chapter 70.41 RCW;

(b) Psychiatric hospitals licensed under chapter 71.12 RCW;

(c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;

(d) Long-term acute care hospitals as defined in RCW 74.60.010;

or

(e) Residential treatment facilities as defined in RCW 71.12.455.

(5) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection (4) of this section.

WSR 24-20-037

PROPOSED RULES

COLUMBIA BASIN COLLEGE

[Filed September 24, 2024, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-072.

Title of Rule and Other Identifying Information: Chapter 132S-100 WAC, Student code of conduct.

Hearing Location(s): On November 14, 2024, at 2:30 - 3:30 p.m., at the Human Resources Conference Room, A Building, Columbia Basin College, 2600 North 20th Avenue, Pasco, WA 99301; or join Zoom meeting <https://columbiabasin.zoom.us/j/82908599342>, Meeting ID 829 0859 9342.

Date of Intended Adoption: November 14, 2024.

Submit Written Comments to: Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, email LCarpenter@columbiabasin.edu, fax 509-544-2029, beginning October 14, 2024, by November 14, 2024.

Assistance for Persons with Disabilities: Contact Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, fax 509-544-2026, email LCarpenter@columbiabasin.edu, by November 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring Columbia Basin College's (college) student code of conduct (code) into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

In addition to complying with the new final rule, the college is updating its student conduct code to address [no information supplied by agency]. These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: 20 U.S.C. § 1681.

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

Name of Proponent: Columbia Basin College, public.

Name of Agency Personnel Responsible for Drafting: Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-4740; Implementation and Enforcement: Corey Osborn, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-4740.

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. Under RCW 34.05.328 (5)(b), the proposed rule changes are exempt from the cost-benefit analysis requirement. The updates to the Title IX regulations are mandated by federal law and do not impose significant

costs on state agencies or other entities. Therefore, a cost-benefit analysis is not necessary for this rule-making process

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: 34 C.F.R. 106, Education, specifically, Title IX.

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. This change is not anticipated to impose any additional cost on business.

October 2, 2024

Corey Osborn, Vice President
Human Resources and Legal Affairs

OTS-5661.3

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-030 Definitions. Advisor - A person of the complainant's or respondent's choosing who can accompany the complainant or respondent to any conduct related meeting or proceeding. (~~This person cannot be a college employee or witness involved in the case.~~)

Assembly - Any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.

Board of trustees - The board of trustees of Community College District No. 19, state of Washington.

Bullying - Physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

Business day - A weekday, excluding weekends and college holidays.

College - Columbia Basin College, established within Community College District No. 19, state of Washington.

College facilities - Any and all real property controlled or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto.

College premises - All land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college, including adjacent streets and sidewalks.

Complainant - A person who reports that a violation of CBC policy including this student code of conduct has occurred towards themselves, another person, a group of people, or college property. Complainant shall mean the same as claimant or other such term(s) meeting this definition as used in other college policies and procedures.

Complaint - A description of facts that allege a violation of student code of conduct or other college policy.

Conduct review officer - Also referred to as the "CRO." A college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

Consent - Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon activity, including sexual activity. A person cannot consent to sexual activity if they are not of legal age, unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

Cyberstalking, cyberbullying, and online harassment - The prohibited behavior of stalking, bullying, and/or harassment through the use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

Dating violence - Violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

~~Disciplinary action - ((The sanctioning of any student pursuant to WAC 132S-100-440 for the violation of any designated rule or regulation of the college.))~~ The process by which the student conduct officer imposes discipline against a student for a violation of the student code of conduct. A written or verbal warning is not disciplinary action.

Disciplinary appeal - The process by which an aggrieved 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 a dismissal from the college are heard by the student conduct committee. Appeals of all other disciplinary action shall be reviewed by the conduct review officer through brief adjudicative proceedings.

Discrimination - Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class.

Domestic violence - Asserted violent misdemeanor and felony offenses or conduct committed by a current or former spouse, current or former cohabitant, a person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Filing - 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) By sending the document by email and 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.

Force - Use of physical violence and/or threats, intimidation or coercion to overcome resistance or gain access or produce consent. Sexual activity that is forced is by definition nonconsensual. However, nonconsensual sexual activity is not by definition forced.

Harassment - Language or conduct by any means that is unwelcome, severe, persistent, or pervasive, and is of such a nature that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably causing a reasonable person substantial emotional distress or undermines their ability to work, study, or participate in their regular life activities or participate in the activities of the college.

Hazing - Acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to admission, initiation, joining, or any other group-affiliation activity.

Hostile environment - Any situation in which there is harassing conduct that could be based on protected class status and is sufficiently severe or pervasive, and is so objectively offensive that it has the effect of substantially limiting the person's ability to participate in or benefit from the college's educational and/or social programs.

Hostile environment sexual harassment - Occurs when sex- or gender-based conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of substantially limiting the ability of the person to participate in or benefit from the college's educational and/or social programs.

Instructional day - Any regularly scheduled instructional day designated in the academic year calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays, and any full-day campus closures due to holidays or other circumstances are not regularly scheduled instructional days.

Nonconsensual sexual contact - Any intentional sexual touching, however slight, with any 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.

Nonconsensual sexual intercourse - 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.

Policy - The written regulations of the college as found in, but not limited to, the student code of conduct and any other official regulation written or in electronic form.

Preponderance of the evidence - The standard of proof used with all student disciplinary matters at CBC that are within the jurisdiction of student code of conduct, which means that the amount of evidence must be at ~~((fifty-one))~~ 51 percent or "more likely than not" before a student is found responsible for a violation.

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.

~~President - ((The chief executive officer appointed by the board of trustees or, in such president's absence, the acting president or other appointed designee. The president is authorized to delegate any~~

of their responsibilities)) 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.

Program or programs and activities - All operations of the college.

Protected class - Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, or genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

Quid pro quo sexual harassment - Occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

Relevant - 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.

Remedies - 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.

~~Respondent - ((The student who is alleged to have violated CBC policy including this code of conduct or against whom disciplinary action is being taken or initiated. Respondent shall mean the same as responding party or other such term(s) meeting this definition as used in other college policies and procedures.))~~ A student who is alleged to have violated the student code of conduct.

Rules of the student conduct code - The rules contained herein as now exist or which may be hereafter amended.

~~Service or notification - The process by which a document is officially delivered to a party. ((Service or notification is deemed complete and computation of time for deadlines begins upon personal delivery of the document or upon the date the document is electronically mailed and/or deposited into the mail. Documents required to be filed with the college such as requests for appeals, are deemed filed upon actual receipt by the office as designated herein during office hours.))~~ Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By 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 that the document is emailed and deposited in the mail, whichever is first.

Sexual exploitation - Occurs when one person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include,

but are not limited to: Invasion of sexual privacy, engaging in voyeurism, nonconsensual video or audio taping of sexual activity; sexually based stalking and/or bullying.

Stalking - Intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

Student - ~~((Any person from the time of application, admitted to CBC, or registered for courses either full time or part time, or participating in any other educational offerings at CBC, excluding students enrolled in the High School Academy.))~~ 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 notified of their acceptance for admission are considered a "student" for purposes of this chapter.

Student appeals board - Also referred to as the "SAB" or "appeals board." The SAB is a three member panel which uses the brief adjudicative process to review appeals of disciplinary actions that do not include sanctions of expulsion, suspension for more than ~~((ten))~~ 10 days, withholding or revocation of a degree, or loss of recognition of a student organization.

Student conduct board - Also referred to as the "SCB" is a four person panel which presides over cases that could result in a sanction of expulsion, suspension for more than ~~((ten))~~ 10 days, revocation of a degree, and/or loss of recognition of a student organization using the full adjudicative process pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student conduct officer - Also referred to as "conduct officer" and/or "SCO" is the person designated by the college president to be responsible for the administration of the student code of conduct or, in such person's absence, the acting SCO or other appointed designee. The SCO is authorized to delegate any and all of their responsibilities as may be reasonably necessary.

Student conduct meeting - The conduct meeting with the student conduct officer using the brief adjudicative process to determine responsibility for violations of the student code of conduct, which do not include sanctions of expulsion, suspension for more than ~~((ten))~~ 10 days, revocation of a degree, and/or loss of recognition of a student organization pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student employee - 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 violation to the student code of conduct including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

Student group - 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.

Student organization - Any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

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 deadline 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.

Title IX coordinator - The administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

NEW SECTION

WAC 132S-100-050 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 student affairs, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible for meeting the stands of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sex discrimination.

(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 the student code of conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-100 ((Student code)) Authority. The CBC board of trustees, acting pursuant to RCW 28B.50.140, ~~((do by written order,))~~ delegates to the president of the college, the authority to ~~((adopt such rules and perform all other acts relating to))~~ administer student ((discipline, including suspension or expulsion of students who are in violation of those rules)) disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-107 Statement of jurisdiction ((of the student code of conduct)). ~~((The CBC student code of conduct will apply to conduct by students and student organizations that occurs on college premises, within the residence halls, at college-sponsored events and activities, foreign or domestic travel associated with any of these events or activities, and to off-campus conduct which is in violation or alleged violation of local, state, or federal law, or this student code of conduct. Allegations or violations which occur off campus can be subject to college disciplinary action if the conduct has an effect on the CBC campus. The student code of conduct applies to conduct from the time of application for admission until the award of a degree and/or certificate, even if the conduct may have occurred before classes begin, after classes end, during the academic year, or during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student is suspended or withdraws from the college while a disciplinary matter is pending. If a student withdraws after allegedly violating the student code of conduct, but prior to the college reaching a disciplinary decision in the matter, the college can move forward with the disciplinary process, place the process on hold until the student returns, or choose to place the investigation results in the student's file for consideration should they reapply for admittance, reenroll or register for any educational offerings at the college.))~~

(1) The student code of conduct shall apply to conduct by students or student groups that occurs:

(a) On college premises;

(b) At or in connection with college programs or activities; or

(c) 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 locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sponsored social or club activities.

(3) Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any degree or certificate, 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 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 college has sole discretion, on a case-by-case basis, to determine whether the student code of conduct 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 code of conduct, the college may refer any violation of federal, state, or local laws to civil and criminal disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-117 Composition of the student conduct board.

~~((The college will have a SCB composed of one chairperson and three decision-making members who shall be vice presidents and deans or directors as designated by the college and trained to conduct the full adjudicative process. The SCB will serve as a standing committee until a final decision is made regarding the student conduct matter for which it was convened. Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings. The chairperson will preside at the disciplinary hearing and will provide administrative oversight throughout the hearing process but will not participate in the deliberations of the decision-making members. The three decision-making members constitute a quorum of the SCB and may act accordingly. The college may retain an advisor to the SCB, including an assistant attorney general.))~~

(1) The student conduct board shall consist of four members who shall be vice presidents, deans, or directors as designated by the college:

(a) One chairperson; and

(b) Three decision-making members.

(2) The student conduct board will serve as a standing committee until a final decision is made regarding the student conduct matter for which it was convened.

(3) Any student conduct board member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings.

(4) The student conduct board members will be trained to conduct the full adjudicative process on an annual basis.

(5) The chairperson will preside at the disciplinary hearing and will provide administrative oversight through the hearing process, but will not participate in the deliberations of the decision-making members.

(6) The three decision-making members constitute a quorum of the student conduct board and may act accordingly.

(7) 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 board and/or chairperson.

(8) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct board must review training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chairperson 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 relation 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.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-202 Prohibited student conduct (~~Rules and regulations~~)). The attendance of a student at CBC is a voluntary entrance into the academic community. By such entrance, the student assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

(1) Conduct themselves in a responsible manner;

(2) Comply with rules and regulations of the college and its departments;

(3) Respect the rights, privileges, and property of other members of the academic community;

(4) Maintain a high standard of integrity and honesty; and

(5) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

(~~Any student or student organization that, either as a principal or participator or by aiding or abetting, commits or attempts to commit to violate any of the proscribed conduct, rules and regulations, or college policy will be subject to disciplinary action.~~) The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group, who commits, attempts to commit, aid, abets, incites, encourages, or as-

sists another person to commit, an act(s) of misconduct, which include, but are not limited to the policies outlined in this chapter.

Amnesty. To support each student's contribution to a safe and effective campus community, the college will not discipline reporting parties or witnesses for code of conduct violations that occur in connection with reported alleged violation unless the college determines the violation was egregious. Egregious violations include conduct that risked someone's health or safety, or involved plagiarism, cheating, or academic dishonesty. Students may be reluctant to report proscribed conduct when alcohol, drugs, or other intoxicants were involved. To encourage reporting, this amnesty provision applies to alcohol- and drug-related student violations.

NEW SECTION

WAC 132S-100-204 Abuse later in life. (1) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(2) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(3) Does not include self-neglect.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-205 Abusive ((conduct)) of others. Assault, physical ((and/or)) abuse, verbal abuse, threats, intimidation, ((harassment, online harassment, coercion, bullying, cyberbullying, retaliation, stalking, cyberstalking, and/or other conduct which threatens or endangers the health or safety of any person or which has the purpose or effect of creating a hostile or intimidating environment)) or other conduct that 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.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-213 ((Discrimination-)) Discriminatory harassment. ((Engaging in any unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.))

(1) 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:

(a) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing.

(b) Alter the terms of an employee's employment; or

(c) Create an intimidating, hostile, or offensive environment for other campus community members.

(2) 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.

(3) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-100-220 Disruption or obstruction. (~~(Includes, but is not limited to, the following:~~

~~(1) Participating in an on- or off-campus demonstration, riot, or any activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community.~~

~~(2) Intentionally and/or recklessly inciting others to engage in any prohibited conduct as defined herein, when incitement may lead to such conduct.~~

~~(3) Obstruction of the free flow of pedestrian or vehicular traffic on college premises or at college-sponsored or supervised functions.)~~ Disruption or obstruction of instruction, research, administration, disciplinary proceedings, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

NEW SECTION

WAC 132S-100-224 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.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-227 ((~~Drugs, controlled substances, and marijuana.~~) Cannabis, drug, and tobacco violations. (~~(1) Legend drugs, narcotic drugs, controlled substances: Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, manufacturing, or seeking any such drug or substance, except in accordance with a lawful prescription for that student by a~~

~~licensed health care professional or as otherwise expressly permitted by federal, state, or local law, is prohibited. Use, possession and distribution of drug paraphernalia for the drugs and substances identified in this section is prohibited.~~

~~(2) Marijuana: While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, is prohibited.)~~

(1) 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 cannabis, federal laws prohibits such use on college premises or in connection with college activities.

(2) 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.

(3) 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.

NEW SECTION

WAC 132S-100-232 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.

(1) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(2) 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.

(3) 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.

AMENDATORY SECTION (Amending WSR 22-20-013, filed 9/22/22, effective 10/23/22)

WAC 132S-100-235 Hazing. (1) Any act, described in Washington statute, RCW 28B.10.900 committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending the college, including 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, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing.

(2) A person who witnesses hazing or has reasonable cause to believe hazing has occurred or will occur and makes a report in good faith may not be sanctioned or punished for violation of hazing unless the person is directly engaged in the planning, directing, or act of hazing reported.

NEW SECTION

WAC 132S-100-237 Independent 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.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-245 Alcohol. (~~((1) Consuming, possessing, furnishing, or selling of alcoholic beverages and/or being under the influence of any alcoholic beverage is prohibited on college premises or at college-sponsored or supervised events except as a participant of legal age in a student program, banquet, or educational program which has the special written authorization of the college president or their designee to permit the service of alcoholic beverages.~~

~~(2) Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under the state alcohol legal drinking age.))~~

(1) Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia except as a participant of legal age in a student program, banquet, or educational program which has the special

written authorization of the college president or their designee to permit the service of alcoholic beverages.

(2) Public intoxication on college premises or at college-sponsored events.

(3) Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under the state alcohol legal drinking age.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-250 Misuse of ((equipment and technology)) electronic resources. ~~Misuse of ((the college's computer, telecommunications, or electronic technology, facilities, network, software, or equipment which))~~ computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

~~(1) Unauthorized ((entry into a file to use, read, or change the contents, or for any other purpose.~~

~~(2) Unauthorized transfer of a file.~~

~~(3) Use of another individual's credentials or password or allowing someone else to use your own credentials and password.~~

~~(4) Violation of law including copyright laws.~~

~~(5) Interference with the normal operations of the college or the work of another student, faculty member, or college official.~~

~~(6) Sending obscene or abusive messages.~~

~~(7) Obtaining personal profit, advertisement, or illegal purposes.~~

~~(8) Use for purposes other than those necessary to fulfill an assignment or task as part of the student's program of instruction.~~

~~(9) Engaging in any actions and behaviors prohibited by college policy.)~~ use of such resources or opening a file, message, or other item;

(2) Unauthorized duplication, transfer, or distribution of a computer program, file, message or other item;

(3) Unauthorized use or distribution of someone else's password or other identification;

(4) Use of such time or resources to interfere with someone else's work;

(5) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(6) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(7) Use of such time or resources in violation of applicable copyright or other law;

(8) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(9) Failure to comply with the college's electronic use policy.

NEW SECTION

WAC 132S-100-252 Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonac-

cidental 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.

NEW SECTION

WAC 132S-100-254 Retaliation. Harming, threatening, intimidating, coercing, or other adverse action taken against 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.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-255 Safety ((misconduct)) violations. ((Intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency on college premises or at any college-sponsored activity, or falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities, or driving a vehicle recklessly or over the speed limit on campus property.)) 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.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-260 ((Sexual misconduct.)) Sex discrimination. ((Engaging in nonconsensual sexual intercourse or nonconsensual sexual contact, requests for sexual favors or other conduct of a sexual nature where such behavior offends a reasonable, orderly, prudent person under the circumstances. This includes, but is not limited to:

- (1) Sexual activity or contact for which clear and voluntary consent has not been given in advance.
- (2) Sexual activity with someone who is incapable of giving valid consent including, but not limited to, someone who is under duress, is underage, sleeping or otherwise incapacitated due to alcohol, drugs, or any other reason.
- (3) Sexual harassment, which includes unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment also includes offensive remarks about a person's gender, gender identity, and/or sexual orientation. Sexual harassment encompasses:
 - (a) Hostile environment sexual harassment; and
 - (b) Quid pro quo sexual harassment.

~~(4) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking.~~

~~(5) Nonphysical conduct such as sexual or gender-based cyberstalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity, and other forms of sexual exploitation.~~

~~(6) Any and all conduct which violates college policy pertaining to sexual misconduct, sexual harassment or discrimination based on sex, gender identity or sexual orientation.))~~

The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimus harm to an individual by treating them differently 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.

(1) 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:

(a) 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.

(b) 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:

(i) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) 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;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the college's education program or activity.

(c) Sexual violence - "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(i) 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.

(ii) 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.

(iii) Incest is 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 (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(v) 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.

(vi) 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:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship.

(vii) 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.

(2) 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.

(a) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(b) 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.

(c) 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.

(d) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(3) 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 including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-273 ~~Unauthorized ((keys, entry, or use)) access.~~

Unauthorized (~~((keys, entry or use))~~) access includes, but is not limited to:

- (1) Unauthorized possession, duplication, or other use of keys (including conventional keys, key cards, or passcodes) to any college premises;
- (2) Unauthorized entry upon or use of college premises or property; or
- (3) Providing keys to an unauthorized person or providing access to an unauthorized person.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-275 ~~Weapons.~~ (~~(Unauthorized possession of weapons (e.g., firearms, daggers, swords, knives, other cutting or stabbing instruments, or clubs) or substances (e.g., explosives) apparently capable of producing bodily harm and/or damage to real or personal property is prohibited on or in college-owned or operated facilities and premises and/or during college-sponsored events.~~

~~(1) Carrying of firearms on or in college-owned or operated facilities and/or during college-sponsored events is prohibited except and unless the permit is registered with the campus security department for a specified period of time.~~

~~(2) The aforementioned regulations within this section shall not apply to equipment or materials owned, used or maintained by the college; nor will they apply to law enforcement officers or campus security officers acting in the legitimate performance of their lawful duties.)~~

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:

(1) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their official duties.

(2) Students with legally issued weapons permits may store their weapons in their 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.

(3) The president 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.

(4) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-280 Academic dishonesty. ((Academic dishonesty minimizes the learning process and threatens the learning environment for all students. As members of the CBC learning community, students are not to engage in any form of academic dishonesty. Academic dishonesty includes, but is not limited to, cheating, plagiarism, and fabrication or falsification of information, research, or other findings for the purpose of fulfilling any assignment or task as part of the student's program of instruction. Any student who commits or aids and abets the accomplishment of an act of academic dishonesty will be subject to disciplinary action.))

Any act of academic dishonesty, including:

(1) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(2) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writing, 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.

(3) Fabrication - 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.

(4) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

NEW SECTION

WAC 132S-100-293 Cyber misconduct. 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, stalk, 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 distribution of a recording of sexual activity.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-400 Student conduct process. (1) As an agency of the state of Washington, the college's SCO, SCB, SAB, or president may be advised or represented by an assistant attorney general in any student code of conduct proceeding.

~~((1) Initiation of the student conduct process. A request to initiate the student conduct process for alleged violation(s) of the student code of conduct must be made to the SCO as soon as possible following the violation. Conduct proceedings may be initiated when the SCO receives any direct or indirect report of conduct that may violate this code, which includes, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party. The college may initiate the student conduct process regardless of whether or not the incident in question is the subject of criminal or civil proceedings. Any member of the college's administration, faculty, staff, or any student or nonstudent may make a request for disciplinary action through the student conduct process and it must be a good faith claim. Formal rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable persons would rely upon in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded. If the complaint indicates that the matter involves sexual misconduct, the SCO will forward the complaint to the Title IX office for review in accordance with the college's Title IX grievance policy and procedure or nondiscrimination and harassment policy and grievance procedure, as applicable. Any determinations of relevant evidence or facts made under the Title IX grievance policy and procedure or the nondiscrimination and harassment policy and grievance procedure shall be relied upon in the student conduct process. The SCO or designee will conduct an initial investigation of a complaint to determine whether it alleges conduct that may be prohibited by the student code of conduct. If it is determined through the initial investigation that the report has merit, the SCO will conduct an investigation to determine responsibility. Except in cases of sexual assault or sexual violence, the parties may elect to mediate the dispute, which shall be facilitated by the SCO. If the SCO's investigation indicates that the alleged violation is so severe that a finding of responsibility is likely to merit expulsion, suspension of more than ten days, revocation of a degree, or loss of recognition of a student organization, the SCO will forward the findings of the investigation to the SCB for review, decision and disciplinary action using the full adjudicative process. If the SCO has a conflict of interest or is the subject of a complaint by the student, the vice president for student services shall, upon request and at their discretion, designate another person to fulfill any such disciplinary responsibilities relative to the request for the student conduct process.~~

~~(2) Notification requirements.~~

~~(a) If it is determined through the initial investigation that an alleged violation of the student code of conduct might have occurred and which is not eligible for referral to the Title IX officer or the SCB, the SCO will provide the following written notification:~~

~~(i) That a report has been submitted alleging conduct which violates the student code of conduct and that a conduct investigation has been initiated to determine responsibility;~~

~~(ii) The specific sections of the student code of conduct which are alleged to have been violated;~~

~~(iii) That the student may either accept responsibility for the alleged violations or request a conduct meeting with the SCO to present evidence to refute the report;~~

~~(iv) That the student may provide evidence such as names and contact information of witnesses to aid the conduct investigation;~~

~~(v) The possible sanction outcomes and that the actual sanctions will depend on the determination of responsibility pending the results of the investigation; and~~

~~(vi) That if the student fails to participate in any stage of the conduct proceedings or to request a conduct meeting within fifteen days from the date of the notice, the college may move forward with the conduct proceeding without their participation.~~

~~(b) If the student requests a conduct meeting within fifteen days of the notice, the student will be provided a written notice to appear for a conduct meeting. The notice to appear will be personally delivered, sent electronically to the student's CBC email address, or sent by mail to the most recent address in the student's record on file with the college, not later than fifteen instructional days after the request for a conduct meeting. The notice will not be ineffective if presented later due to the student's absence. Such notice will:~~

~~(i) Set forth the specific provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violations, and a description of evidence, if any, of the violation.~~

~~(ii) Notify the student of the SCO's investigation and possible sanctions, if any.~~

~~(iii) Specify the time, date, and location where the student is required to meet with the SCO. The meeting will be scheduled no earlier than three instructional days, but within thirty instructional days of the date on the notice to appear sent to the student. The SCO may modify the time, date, and location of the meeting, either at the student's or college's request, for reasonable cause.~~

~~(iv) Inform the student that failure to attend the conduct meeting will not stop the disciplinary process and may result in a transcript/registration hold being placed onto the student's account, and disciplinary actions.~~

~~(v) Inform the student that they may be accompanied at the meeting by an advisor at their expense. The advisor cannot be a college employee or witness. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their advisor.~~

~~(vi) Inform the student that they may present evidence to support their assertions during the meeting.~~

~~(3) Student conduct meeting - Brief adjudicative process.~~

~~(a) During the student conduct meeting, the student will be informed of the following:~~

~~(i) The specific acts and the provision(s) of college policy that the student is alleged to have violated;~~

~~(ii) The disciplinary process;~~

~~(iii) The range of sanctions which might result from the disciplinary process and that the actual sanctions will depend on the findings of responsibility;~~

~~(iv) The student's right to appeal.~~

~~(b) The student will have the opportunity to review and respond to the allegation(s) and evidence and provide the SCO with relevant information, evidence and/or witnesses to the alleged violation(s), and/or explain the circumstances surrounding the alleged violation(s).~~

~~(c) The advisor may assist the student during the conduct meeting, however the student is responsible for presenting their own information and evidence. The advisor may only communicate with the student they are advising. Any disruptions or failure to follow the conduct process and/or directions of the SCO may result in the advisor being excused from the meeting.~~

~~(4) Decision by the SCO.~~

~~(a) After interviewing the student or students involved and/or other individuals as appropriate, and considering the evidence, the SCO may take any of the following actions:~~

~~(i) Determine that the student is not responsible for a violation of the student code of conduct and thereby terminate the student conduct process;~~

~~(ii) Determine that the student is responsible for a violation of the student code of conduct and impose disciplinary sanctions as provided herein;~~

~~(iii) Determine that further inquiry is necessary and schedule another meeting for reasonable cause; or~~

~~(iv) Refer the case to the SCB for the full adjudicative hearing process if the alleged violation is discovered to be of a severe nature and may result in sanctions that include expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.~~

~~(b) Notification of the decision by the SCO will be issued pursuant to WAC 132S-100-130 within thirty instructional days of the final student conduct meeting. Due to federal privacy law, the college may not disclose to the complainant any sanctions imposed on the responding student unless the complainant was the alleged victim of a violent crime as defined under the Federal Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the responding student consents to such disclosure. A copy of the decision notification will be filed with the office of the SCO.~~

~~(c) Disciplinary action taken by the SCO is final unless the student exercises the right of appeal as provided herein.))~~

~~(2) Initiation of disciplinary action.~~

~~(a) Any member of the college community may file a complaint against a student or student group for possible violations of the student code of conduct.~~

~~(b) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student code of conduct.~~

~~(i) Sex discrimination, including sex-based harassment - 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 code of conduct. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.~~

(ii) 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.

(c) 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.

(d) If a student conduct officer determines that a complaint appears to state a violation of the student code of conduct, 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.

(i) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(ii) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(e) 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.

(f) Both the respondent and the complainant in cases involving allegations of sex discrimination 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.

(g) All disciplinary actions will be initiated by the student conduct officer. If that student conduct 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.

(h) 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 student code of conduct 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.

(i) At the meeting, the student conduct officer will present the allegation 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.

(j) Within 10 calendar 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 code of conduct provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explana-

tion 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.

(k) The student conduct officer may take any of the following disciplinary actions:

(i) Exonerate the respondent and terminate the proceedings;

(ii) Impose a disciplinary sanction(s), with or without conditions, as describe in WAC 132S-100-XXX; or

(iii) Refer the matter directly to the student conduct board for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chairperson of the student conduct board, with a copy served on the respondent.

(l) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by the preponderance of the evidence, there was a violation of the student code of conduct; 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.

(i) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before the student conduct board.

(ii) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct board.

(iii) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(iv) The student conduct officer shall promptly notify the other party of the request.

(v) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(A) The college is unable to identify respondent after taking reasonable steps to do so;

(B) Respondent is not participating in the College's educational programs or activities;

(C) 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;

(D) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(E) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) 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 the complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-407 Appeal ((process)) from disciplinary action.

~~((1)(a) Disciplinary decisions may be appealed by filing a written request with the office of the VPSS within twenty-one days of the notice of the decision. Disciplinary decisions of the SCO may be appealed for review by the SAB using the brief adjudicative process. Disciplinary decisions of the SCB may be appealed for review by the college president using the brief adjudicative process. Disciplinary decisions by the SCO that include sexual misconduct may be applied for review by the SCB using the brief adjudicative process. Failure to file a written appeal within twenty-one days will result in the decision becoming final with no further right of appeal.~~

~~(b) The request for appeal must include a brief statement explaining the grounds for the appeal or why the party is seeking review. Disagreement with the finding and/or with the sanctions does not, by itself, represent grounds for appeals.~~

~~(2) Decisions may be appealed for one or more of the following:~~

~~(a) To determine whether there was a procedural error that substantially affected the outcome of the finding or sanctioning. Deviation from designated procedures is not a basis for sustaining an appeal unless significant prejudice results.~~

~~(b) To determine whether the sanction(s) imposed were appropriate and not excessively lenient or excessively severe for the violation of the student code of conduct for which the student was found responsible.~~

~~(c) To consider new information, sufficient to alter a decision, or other relevant facts not brought during fact finding, because such information and/or facts were not known, and the student bringing the appeal had no duty to discover or could not have reasonably discovered facts giving rise to the issues during investigation or fact finding.~~

~~(3) Refusal to participate during the investigation or student conduct process does not constitute a right to appeal.~~

~~The VPSS or designee will forward appeals based on one or more of the required grounds for appeal to the SAB, SCB, or president as provided herein.~~

~~A party, who timely appeals a disciplinary action, has a right to a prompt, fair, and impartial appeal review as provided in these procedures.~~

~~Interim measures will remain in effect pending an appeal unless they have been removed pursuant to WAC 132S-100-445.~~

~~(4) Appeals of disciplinary action(s) will be taken in the following order:~~

~~(a) Complainants are afforded the same right to appeal as respondents in student conduct matters in which the complainant was the alleged target of violence or sexual misconduct. If both parties appeal the decision, the appeals will be reviewed in the order in which they are filed or reviewed together, if they state the same, similar, or related grounds or substance for appeal.~~

~~(b) The SAB or college president's decision to affirm, reverse or modify the decision and/or sanction will be issued pursuant to WAC 132S-100-130.~~

~~(c) The SAB's, and the college president's decisions are final.))~~

(1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132S-100-400, the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within 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 student conduct officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct board, has a 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 code of conduct shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) A student appeals board (SAB) shall conduct a brief adjudicative proceedings for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) The conduct review officer shall hear appeals from:

(a) Disciplinary suspensions in excess of 10 instructional days;

(b) Dismissals;

(c) Sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the conduct review officer by the student conduct officer or student conduct board.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-413 Full adjudicative process. The ((SCB)) student conduct board will use the following full adjudicative process to determine responsibility for serious violations which include sanctions of suspension for more than ((ten)) 10 days, expulsion, withholding or

revocation of a degree, or loss of recognition of a student organization.

~~((1) The parties will be sent written notification of the SCB adjudication proceedings within ninety days from the date of the filing of the appeal. The notification will contain the following:~~

~~(a) The time, date, and location of the hearing, which shall not be less than seven days from the date of the notice of the hearing;~~

~~(b) The specific acts alleged and the provision(s) of college policy which those acts violated;~~

~~(c) The SCB procedures;~~

~~(d) The name and contact information for the SCB and their advisor, if any, representing the college. The notice will include the official title, work mailing address, and telephone number of each of these individuals;~~

~~(e) Unless otherwise ordered by the SCB chairperson, the name and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their advisors;~~

~~(f) A statement that if a party fails to attend or participate in a hearing or other stage of this adjudicative proceeding, they may be held in default in accordance with chapter 34.05 RCW and/or the college may continue the student conduct process, including the hearing, despite the party's absence.~~

~~(2) The respondent and complainant have the right to be assisted by one advisor of their choice and at their own expense. The advisor must not be a witness or someone employed by the college. If the respondent chooses to have an attorney serve as their advisor, the student must provide notice to the SCB no less than five instructional days prior to the hearing. The SCB hearing may not be delayed due to the scheduling conflicts of an advisor and such requests will be subject to the discretion of the SCB chairperson. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their representative/advisor.~~

~~The respondent and/or complainant are responsible for presenting their own information, and therefore, during the hearing, advisors are not permitted to address the SCB, witnesses, the SCO, or any party or advisor invited by the parties to the hearing. An advisor may communicate with their advisee and recesses may be allowed for this purpose at the discretion of the SCB chairperson. The advisor may not disrupt or interfere with any aspect of the proceeding.~~

~~The SCB chairperson shall have the right to impose reasonable conditions upon the participation of the advisor.~~

~~(3) The SCB and the parties will be provided reasonable access to the documentation and evidence which will be reviewed by the SCB, as well as the case file that will be retained by the SCO in accordance with applicable privacy laws.~~

~~(4) Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings.~~

~~A party may make a written request to the SCB chairperson for the recusal of an SCB member no less than five instructional days prior to the hearing. The request must be for good cause, which must be shown by the party making the request. The SCB chairperson will consider the request and notify the student of their decision regarding the recusal prior to the hearing. If the SCB chairperson grants the recusal, a replacement for the recused SCB member will be made without unreasonable delay.~~

~~(5) The parties involved in the hearing will be required to submit their witness list and any evidence to be discussed at the hearing to the SCB chairperson no less than five instructional days prior to the hearing. The parties must submit a witness list which contains a written statement from each witness that includes a brief description of the relevant information the witness will provide during the hearing. Witnesses not listed will not participate in the hearing.~~

~~(6) Discovery in the form of depositions, interrogatories, and medical examinations of parties are not permitted in student conduct adjudications. Other forms of discovery which ensure the prompt and thorough completion of the adjudication process may be permitted at the discretion of the SCB chairperson.~~

~~(7) Hearings will be closed to the public except if consented to by all parties and at the discretion of the SCB chairperson. Witnesses may be allowed in the hearing room only during the time in which they provide their statements to the SCB. The complainant and respondent, depending on their preference and subject to orders of a court of law, such as protection orders, may be present for and observe the entire hearing.~~

~~At the discretion of the SCB chairperson, and where the rights of the parties will not be prejudiced, all or part of the hearing may be conducted by telephone, video conference, or other electronic means. Each party shall have the opportunity to hear and if technically and economically feasible, to see the entire hearing while it is taking place. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the SCB.~~

~~(8) The SCB chairperson will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the respondent and complainant, who disrupts a hearing or who fails to follow the directions of the SCB chairperson may be excluded from the proceedings and may be subject to disciplinary action.~~

~~(9) Questions posed by any party to be answered by each other or by witnesses must be appropriate and respectful. The SCB chairperson may require any participant of the hearing to provide all questions in writing to the SCB chairperson. The SCB chairperson, if appropriate and at their sole discretion, will read the question to the individual to whom it is directed. Any question which the SCB chairperson has chosen not to read will be documented on record and kept within the case file. The SCB chairperson will decide matters related to the order of the proceedings.~~

~~(10) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will be recorded or transcribed, except for the deliberations of the SCB. The record will be the property of the college.~~

~~(11) After weighing and considering the evidence, the SCB will decide by unanimous vote whether the respondent is responsible or not responsible for a violation of the student code of conduct. If there is a finding of responsibility for a violation, the SCB shall determine sanctions as provided herein.~~

~~(12) The SCB's decision is made on the basis of a "preponderance of the evidence" standard of proof, that is, whether it is more likely than not that the respondent violated the student code of conduct.~~

~~(13) The notice of decision of the SCB will be issued pursuant to WAC 132S-100-130. A copy of the SCB's decision will also be filed with the office of the SCO.~~

~~(14) Disciplinary action taken by the SCB is final unless the student exercises the right of appeal to the college president as provided herein.)~~

(1) Prehearing.

(a) Proceedings of the student conduct board shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(b) The student conduct board chairperson shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chairperson 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:

(i) A copy of the student code of conduct;

(ii) The basis for jurisdiction;

(iii) The alleged violation(s);

(iv) A summary of facts underlying the allegations;

(v) The range of possible sanctions that may be imposed; and

(vi) A statement that retaliation is prohibited.

(c) The chairperson 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.

(d) Upon request filed at least five calendar days before the hearing by any party or at the direction of the chairperson, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the student conduct board. 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.

(e) The chairperson may provide to the student conduct board members in advance of the hearing copies of:

(i) The student conduct officer's notification of imposition of discipline (or referral to the committee); and

(ii) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chairperson should remind the members that these "pleadings" are not evidence of any facts they may allege.

(f) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the student conduct board chairperson may provide copies of these admissible exhibits to the student conduct board members before the hearing.

(g) Communications between student conduct board 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 the 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.

(h) In cases heard by the student conduct board, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.

(i) The student conduct board will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(j) Attorneys for students must file a notice of appearance with the student conduct board chairperson at least four business days before the hearing. Failure to do so may, at the discretion of the student conduct board chairperson, 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.

(k) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(i) 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.

(ii) Advisors - The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(iii) Extension of time - The chairperson 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 (1)(ii) of this subsection.

(iv) Evidence - In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and the complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(v) 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 student conduct board chairperson pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(1) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(i) Notice - In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(A) The respondent is presumed not responsible for the alleged sex-based harassment;

(B) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(C) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(D) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(E) The student code of conduct prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(ii) Extension of time - The chairperson 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 chairperson in any prehearing conference. The written request must be served simultaneously by email to all parties and the chairperson. 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 chairperson will serve a written decision upon all parties, to include the reasons for granting and denying any request. The chairperson's decision shall be final. In exceptional circumstances, for good cause shown, the chairperson may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(iii) Advisors - The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(iv) 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.

(v) 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 chairperson issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(vi) Separate locations - The chairperson may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the student conduct board and parties to simultaneously see and hear the party or the witness while that person is speaking.

(vii) 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.

(2) Presentation of evidence.

(a) Upon the failure of any party to attend or participate in a hearing, the student conduct board may either:

(i) Proceed with the hearing and issuance of its decision; or

(ii) Serve a decision of default in accordance with RCW

34.05.440.

(b) 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 chairperson shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chairperson may exclude that person from the hearing room.

(c) The chairperson shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chairperson shall ensure 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 recordings shall also be permitted, in accordance with WAC 10-08-190.

(d) The chairperson shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the student conduct board.

(e) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case.

(f) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(g) 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 chairperson will determine whether questions will be submitted to the chairperson, 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 chairperson may revise this process if, in the chairperson's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(i) Prior to any questions being posed to a party or witness, the chairperson must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chairperson will retain for the record copies of any written questions provided by any party.

(ii) The chairperson must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(iii) The chairperson shall exclude and the student conduct board 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:

(A) Spousal/domestic partner privilege;

(B) Attorney-client communications and attorney work product privilege;

(C) Clergy privileges;

(D) Medical or mental health providers and counselor privileges;

(E) Sexual assault and domestic violence advocate privileges; and

(F) Other legal privileges set forth in RCW 5.60.060 or federal law.

(iv) The chairperson shall exclude and the student conduct board 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.

(v) The student conduct board 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 student conduct board 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.

(h) Except in cases involving allegations of sex-based harassment, the chairperson has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chairperson to be asked of the witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

(3) Initial decision.

(a) At the conclusion of the hearing, the committee chair shall permit the parties to make closing arguments in whatever form, written or verbal, the student conduct board wishes to receive them. The student conduct board also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(b) Within 20 calendar days following the conclusion of the hearing or the student conduct board's receipt of closing arguments, the student conduct board shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The 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 code of conduct were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(c) The student conduct board's decision shall also include a determination of appropriate sanctions, if any. If the matter was referred to the committee by the student conduct officer, the student conduct board shall identify and impose disciplinary sanction(s) or conditions (if any), as authorized in the student code of conduct. If the matter is an appeal by a party, the student conduct board 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.

(d) The chairperson shall cause copies of its decision to be served on the parties and their attorney, if any. The notice will inform all parties of their appeal rights. The chairperson shall also promptly transmit a copy of the decision and the record of the student conduct board's proceedings to the president.

(e) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

(4) Review of initial decision.

(a) Any party, including a complainant in sex-based harassment cases, may appeal the student conduct board's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the student conduct board's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(b) 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:

(i) Procedural irregularity that would change the outcome;

(ii) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(iii) 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.

(c) 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.

(d) 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 board and will normally be limited to a review of those issues and arguments raised in the appeal.

(e) The president shall serve a written decision on all parties and their attorneys, if any, within 20 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.

(f) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(g) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-100-417 Brief adjudicative process. (~~((1) The brief adjudicative process is conducted in accordance with RCW 34.05.482 through 34.05.494.~~

~~(2) The SCO will use the brief adjudicative process to make decisions of findings of responsibility as provided in this code of conduct.~~

~~(3) The SCB will use the brief adjudicative process to review appeals of disciplinary decisions which include allegations of sexual misconduct but do not include sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.~~

~~(4) The president will use the brief adjudicative process to review appeals of all disciplinary decisions made by the SCB.~~

~~(5) The SAB will use the brief adjudicative process to review timely appeals of disciplinary decisions which do not include sexual misconduct, sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.~~

~~(6) Within twenty days of filing the appeal, the SAB or president, as applicable, shall review the record of the preceding conduct decision and all relevant information provided by the parties, and based on a preponderance of the evidence by unanimous vote as applicable, shall make a determination to affirm, reverse, or modify the findings and/or sanctions. The SCB, SAB and president shall have the discretion to seek clarification from witnesses as needed.~~

~~(7) Notification of the decision will be issued pursuant to WAC 132S-100-130.)~~

(1) Initial hearing.

(a) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are 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.

(b) 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:

(i) An opportunity to be informed of the agency's view of the matter; and

(ii) An opportunity to explain the party's view of the matter.

(c) The conduct review officer shall serve as initial decision upon the respondent and the student conduct officer within 10 calendar 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 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(d) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct board for a disciplinary hearing.

(2) Review of an initial decision.

(a) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(b) The president 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.

(c) During the review, the president shall give all parties 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 board for a formal adjudicative hearing.

(d) 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 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 president does not make a disposition of the matter within 20 calendar days after the request is submitted.

(e) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct board for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-440 Corrective action, disciplinary sanctions, terms and conditions. ~~((Students found responsible for violations of the student code of conduct may be subject to the following sanctions:~~

~~(1) Warning. A verbal statement or notice in writing to the respondent that they are violating or have violated college rules or regulations and that continued violations may be the cause for further disciplinary action.~~

~~(2) Reprimand. Notice in writing that the respondent has violated one or more of the policies outlined in the student code of conduct~~

and that continuation of the same or similar behavior may result in more severe disciplinary action.

~~(3) Loss of privileges. Denial of specified privileges for a designated period of time.~~

~~(4) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval from a student organization. Services and approval to be withdrawn may include, but are not limited to, intramural sports, information technology services, college facility use and rental, and involvement in organizational activities.~~

~~(5) Restitution. A student may be required to make restitution for damage, loss, or injury. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution within thirty instructional days or any period set by the SCO, SCB, SAB, or president will result in an administrative hold being placed on the student's registration, which will prevent future enrollment until the restitution is complete.~~

~~(6) Discretionary sanctions. Work assignments, essays, service to the college, or other related discretionary assignments.~~

~~(7) Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of college rules or regulations or other failure to meet the college's expectations within the student code of conduct. Written notice of disciplinary probation will specify the period of probation and any condition(s) upon which their continued enrollment is contingent. Such conditions may include, but not be limited to, adherence to terms of a behavior contract or limiting the student's participation in extra-curricular activities or access to specific areas of the college's facilities. Disciplinary probation may be for a specified term or for a period which may extend to graduation or award of a degree or certificate or other termination of the student's enrollment in the college.~~

~~(8) Restricted access to (trespass from) certain college facilities, property or activities.~~

~~(9) Suspension. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may apply. Students who are suspended may be denied access to all or any part of the campus or other facilities for the duration of the period of suspension.~~

~~(10) Expulsion. Permanent separation of the student from the college. Students who are expelled may be permanently denied access to all or any part of the campus or other facilities.~~

~~(11) Revocation of admission and/or degree or certificate. Admission to the college or a degree or certificate awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining admission or the degree or certificate, or for other serious violations committed by a student prior award of a degree or certificate.~~

~~(12) Withholding degree or certificate. The college may withhold awarding a degree or certificate until the completion of the process set forth in the student code of conduct, including the completion of all sanctions imposed, if any.~~

~~(13) 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. Authorization for release of in-~~

formation will be required to allow the college access to the 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 student code of conduct.

(14) ~~Delayed suspension. A probationary amount of time set by the SCO, SCB, SAB, or president in which the student must remain in good standing. If the student is found responsible for violating the student code of conduct while still under the delayed suspension guidelines, then the student will be suspended, as set forth in subsection (7) of this section.~~

(15) ~~No contact order. An order that prohibits direct or indirect physical, verbal, written, and/or any other form of communication or contact with an individual or group. Direct and indirect contact includes, but is not limited to, phone calls, letters, going within sight of places of work or residence, email, social media, etc.~~

~~If the respondent is found responsible for any violation, the student's past disciplinary record may be considered in determining an appropriate sanction.)~~

(1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college-sponsored student organizations, athletic teams, or living groups found responsible for violating the student code of conduct.

(a) Warning - A verbal or written statement to a student that there is a violation and that continued violation may be cause for 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 the student 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 student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the 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 dismissal is imposed.

(2) Disciplinary terms and conditions that may be imposed or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Education - Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) Loss of privileges - Denial of specified privileges for a designated period of time.

(c) Not in good standing - A student deemed "not in good standing" with the college 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 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) Professional evaluation - Referral for drug, alcohol, psychological, or medical evaluation by an appropriate 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.

(f) Restitution - Reimbursement for damage to or misappropriation of property, or for injury to person, 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.

(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 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 sanction and conditions may be considered in petitions for readmission to the college.

NEW SECTION

WAC 132S-100-442 Hazing sanctions. (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons

or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or non-profit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(3) Any student group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control, shall be deprived of any official recognition or approval granted by the college.

(4) Any student group found responsible for violating the student code of conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

NEW SECTION

WAC 132S-100-444 Summary suspension. (1) Summary suspension is a temporary exclusion 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 procedures are 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 student 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 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 code of conduct or the law(s) 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 warning respondent that their privileges to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college cam-

pus 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 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.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-445 Interim measures. (1) Interim measures may be taken pending an investigation or adjudication if there is cause to believe that a student or student organization poses an imminent risk of harm to anyone in the college community, or to property, or if the misconduct is so severe, persistent, or pervasive as to substantially disrupt or materially interfere with the college's operations and/or activities or with an individual's education/work activities. Interim measures may include counseling, extensions of time or other course-related adjustments, modifications of class schedules, campus escort services, restrictions on contact between the parties, increased security and monitoring of certain areas of campus, restrictions on access to college owned or operated property and/or events (notice of trespass), including classes, activities and privileges, or any similar measures while the conduct process is pending.

(2) The student must adhere to the conditions of the interim restriction. If an interim restriction includes campus wide restricted access, the SCO may provide written permission for the student to enter campus for specific purposes such as meeting with the SCO or designee, faculty, staff or witnesses to prepare for an appeal, or to participate in the student conduct process.

(3) Notice of interim measure. The student will be provided written notice of the interim measure(s), stating:

(a) The time, date, place, and nature of the circumstances which created the need for interim measures.

(b) A description of any relevant evidence.

(c) The interim measure.

(d) The possible sanctions that could result from violation of the interim measure including arrest for criminal trespass if the student has been trespassed from campus.

(e) The student's right to either accept the interim measure or submit a written appeal of the interim measure within three instructional days to the office of VPSS ((office)). An appeal is waived if not submitted within the prescribed time. If the student timely appeals, the interim measure shall remain in place during the appeal process. The VPSS will provide written notification to the student of the decision to either maintain or discontinue the interim measure within five instructional days of receipt of the appeal.

(f) If the student has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, that they shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the SCO as arranged by an appointment, or to attend a disciplinary hearing. The interim measure shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim restriction.

WSR 24-20-040

PROPOSED RULES

COLUMBIA BASIN COLLEGE

[Filed September 24, 2024, 10:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-073.

Title of Rule and Other Identifying Information: Columbia Basin College's student hearing procedure under Title IX, WAC 132S-110-020 and 132S-110-030, and other related rules as necessary.

Hearing Location(s): On November 14, 2024, at 1:30 - 2:30 p.m., at 2600 North 20th Avenue, Pasco, WA 99301 (Human Resources Conference Room); or join Zoom meeting <https://columbiabasin.zoom.us/j/82683969858?pwd=bh9AWQEv6PsIXBdLZhBr2giJMziIrW.1>, Meeting ID 826 8396 9858, Password 040369; or One-tap mobile +12532050468,,82683969858# US, +12532158782,,82683969858# US (Tacoma).

Date of Intended Adoption: November 14, 2024.

Submit Written Comments to: Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, email LCarpenter@columbiabasin.edu, fax 509-544-2029, beginning October 14, 2024, by November 14, 2024, 3:30 p.m.

Assistance for Persons with Disabilities: Contact Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, fax 509-544-2026, email LCarpenter@columbiabasin.edu, by November 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring Columbia Basin College's (college) Title IX hearing procedure for students into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the procedure to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

In addition to complying with the new final rule, the college is updating its Title IX hearing procedure for students to address jurisdiction and prohibited conduct changes. These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: 20 U.S.C. § 1681.

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

Name of Proponent: Columbia Basin College, public.

Name of Agency Personnel Responsible for Drafting: Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-4740; Implementation and Enforcement: Corey Osborn, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-4740.

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. Under RCW 34.05.328 (5) (b), the proposed rule changes are exempt from the cost-benefit analysis requirement. The updates to the Title IX regulations are mandated by federal law and do not impose significant costs on state agencies or other entities. Therefore, a cost-benefit analysis is not necessary for this rule-making process.

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: 34 C.F.R. 106, Education, specifically, Title IX.

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.

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. This change is not anticipated to impose any additional cost on business.

September 24, 2024
Corey Osborn, Vice President
Human Resources and Legal Affairs

OTS-5644.1

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-020 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))~~ sex discrimination."

For purposes of this procedure, ("~~sexual harassment~~" encompasses the following conduct:

(1) **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.

(2) **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.

(3) **Sexual assault.** Sexual assault includes the following conduct: "sex discrimination" which includes sex-based harassment, occurs when a respondent causes more than de minimis harm to an individual by treating them differently from an otherwise similarly situated individual based on:

- (1) Sex stereotypes;
- (2) Sex characteristics;
- (3) Pregnancy or related conditions;
- (4) Sexual orientation; and
- (5) Gender identity.

For the purpose of this procedure, "sex-based harassment" is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(6) **Quid pro quo harassment.** An 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.

(7) **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 recipient's education program or activity;

(b) The type, frequency, and duration of the conduct;

(c) The parties' ages, roles within the recipient'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 recipient's education program or activity.

(8) **Sexual violence** 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 either wholly or half related. Descendant includes stepchildren and adopted children under the age of ((eighteen)) 18.

(d) **Statutory rape.** ((Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.)) Nonforcible sexual intercourse with a person who is under the statutory age of consent.

((+4)) (9) **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 cohabita-

ted with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

~~((5))~~ (10) **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.

~~((6))~~ (11) **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.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-030 Title IX jurisdiction. (1) This 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 Title IX sexual harassment as that term is defined in this procedure.)~~ Meets the definition of sex discrimination, sex-based harassment, or retaliation as defined in this disciplinary procedure, including causing more than de minimis harm to the complainant;

(b) Occurred in the United States or interfered with the complainant's ability to access or participate in the college's educational programs or activities in the United States; and

(c) Occurred during a college educational program or activity, or interferes with the complainant's ability to access or participate in the college's educational programs or activities.

(2) For purposes of this procedure, an "educational program or activity" is defined as all operations of the college, including 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 procedure must be dismissed if the Title IX coordinator or designee determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from addressing allegations or taking disciplinary action against conduct that violates provisions of the college's student conduct code, chapter 132S-100 WAC, federal or state law, or other college policies.

(4) If the Title IX coordinator or designee determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or does not constitute a Title IX violation, the Title IX coordinator or designee 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.

WSR 24-20-041
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 24, 2024, 11:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-034 and 24-10-113.

Title of Rule and Other Identifying Information: WAC 181-79A-231, 181-79A-232, and 181-82-107; substitute teacher assignment and certificate requirements.

Hearing Location(s): On November 14, 2024, at 8 a.m., at The Heathman Lodge, Vancouver, Washington. Exact meeting location and a link to listen to the meeting virtually will be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: November 14, 2024.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8 a.m., Monday, November 11, 2024.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb.k12.wa.us, by Thursday, October 31, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update limited certificate and substitute assignment policy.

Reasons Supporting Proposal: To reduce confusion in the field.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Nguyen, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-489-4471; Implementation: Jeffrey Youde, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-870-0143; and Enforcement: Erica Hernandez-Scott, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-890-2443.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules 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.

September 23, 2024
Michael Nguyen
Rules Coordinator

OTS-5826.1

AMENDATORY SECTION (Amending WSR 24-15-123, filed 7/23/24, effective 8/23/24)

WAC 181-79A-231 Limited certificates. All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

(1) **Conditional certificate.**

(a) **Intent.** The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

(b) **Roles.**

(i) Teacher roles. The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

- (A) Special education teachers;
- (B) Nonimmigrant exchange teachers;
- (C) Traffic safety education teachers.

(ii) Educational staff associate roles. The conditional certificate may be issued in the following education staff associate roles:

- (A) School counselor;
- (B) School nurse;
- (C) School psychologist;
- (D) School social worker;
- (E) School speech language pathologist or audiologist;
- (F) School behavior analyst;
- (G) School orientation and mobility specialist.

(iii) Administrator role. The conditional certificate may be issued in the following administrator role: Principal.

(c) **Request requirements.**

(i) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that one or more of the following criteria have been met:

(A) The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or

(B) No person with regular certification in the area is available; or

(C) The individual holds a bachelor's degree or higher from an accredited college or university; or

(D) The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or

(E) The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or

(F) The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or

(G) Circumstances warrant.

(ii) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:

(A) The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and

(B) After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role; and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within 20 working days from the commencement of the assignment; and

(H) A written plan of support will be developed within 20 working days from the commencement of the assignment.

(d) **Minimum requirements.**

(i) Individuals must complete 50 continuing education credit hours after the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the role of nonimmigrant exchange teacher are not required to complete 50 continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being enrolled in a state-approved teacher preparation program resulting in a teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program under WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a valid license as a registered nurse (RN) under chapter 18.79 or 18.80 RCW. Applicants who

meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) School behavior analyst. Applicants must meet one or more of the following:

(A) Hold a valid Washington state department of health license as an assistant behavior analyst. The district, educational service district, or approved private school must provide a supervisor who meets the department of health requirements for a supervisor of assistant behavior analysts; or

(B) Hold a valid board certified assistant behavior analyst (BCABA) certificate from the behavior analyst certification board (BACB). The district, educational service district, or approved private school must provide a supervisor who meets the behavior analyst certification board (BACB) requirements for a supervisor of board certified assistant behavior analyst (BCABA); or

(C) Hold a bachelor's degree, and, must be enrolled in or have completed the course work requirements for the board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), as verified by the institution providing the behavior analysis course work.

(xi) School orientation and mobility specialist.

(A) Applicants must have completed all requirements for an approved national certificate with the exception of the internship and the assessment, as verified by the institution providing the course-work for the national certificate. The approved national certificates are the certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), and the national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB).

(B) The school employer must ensure the candidate has access to a mentor who meets the requirements for an intern supervisor set by the academy for certification of vision rehabilitation and education professionals (ACVREP) or the national blindness professional certification board (NBPCB).

(xii) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) **Validity.** The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The ~~((reissuance of the))~~ special education conditional certificate will have a validity period of three years or less.

(f) **Reissuance.**

(i) The conditional certificate may be reissued upon request by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the 50 continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth, and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may ~~((only))~~ not be reissued ~~((once. The reissuance of the special education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a state-approved teacher certificate program leading to a special education endorsement))~~.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

(vi) Conditional certificates as a school behavior analyst may be reissued twice.

(vii) Conditional certificates as a school orientation and mobility specialist may be reissued once.

(2) **Transitional certificate.**

(a) **Intent.** The transitional certificate provides flexibility for school districts in employing an individual ~~((according to this chapter.~~

~~(i) Individuals whose continuing certificate has lapsed or expired.~~

~~(ii) Individuals))~~ whose certificate has lapsed or expired ~~((by June 30, 2022,))~~ under WAC 181-79A-240.

(b) **Roles.** The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for ~~((continuing))~~ certificates ~~((or other certificates))~~ subject to renewal under WAC 181-79A-240.

(c) Request requirements.

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose ~~((continuing))~~ certificate has lapsed or expired according to this chapter.

~~(ii) ((The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose certificate has expired according to this chapter.~~

~~(A) Districts may request a transitional certificate for all certificates other than continuing certificates under this section through December 31, 2023.~~

~~(B) Educators under this section must apply for the transitional certificate through the office of the superintendent of public instruction no later than June 30, 2024.~~

~~(iii))~~ School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary certificate renewal requirements under this chapter.

(d) Minimum requirements.

(i) The holder of the transitional certificate must complete the requirements for certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose certificate has been suspended, revoked, or surrendered shall be eligible to be employed under this section.

(e) **Validity.** The transitional certificate is valid until two years from the date the holder was issued the certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) **Reissuance.** The transitional certificate is not renewable and may not be reissued.

(3) Emergency substitute certificate.

(a) **Intent.** The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

(b) Roles.

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b) (2) (ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

(c) Request requirements.

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) **Validity.** Emergency substitute certificates shall be valid for two years or less.

(e) **Reissuance.** The emergency substitute certificate may be reissued upon request by the employing local school district, approved private school, or educational service district.

(4) **Intern substitute certificate.**

(a) **Intent.** The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) **Roles.** The intern substitute certificate may be issued to student teachers or intern teachers.

(c) **Request requirements.**

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for individuals (~~enrolled in student teaching and internships~~) to serve as substitute teachers in the absence of the cooperating teacher.

(ii) (~~The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.~~) The intern substitute teacher certificate is issued upon approval by the supervising preparation program provider.

(d) **Minimum requirements.** The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a substitute teacher only in the classroom(s) (~~to which the individual is assigned as a student teacher or intern~~) of the cooperating teacher.

(e) **Validity.** The intern substitute teacher certificate is valid for (~~one~~) two years or less.

(f) **Reissuance.** The intern substitute certificate may be reissued upon request by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

OTS-5411.1

AMENDATORY SECTION (Amending WSR 18-21-072, filed 10/11/18, effective 11/11/18)

WAC 181-79A-232 Substitute certificate. (~~(1)~~) **Substitute certificate.**

(~~(a)~~) (1) **Intent.** The intent of the substitute certificate is to provide a district, educational service district, or approved private school with hiring flexibility during the absence of an educator.

(~~(b)~~) (2) **Roles.**

(~~(i)~~) (a) This certificate may be issued in the role of teacher, educational staff associate, or administrator.

~~((i))~~ (b) Educational staff associates may only substitute in the specific role of their certificate.

~~((iii))~~ (c) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed ~~((one hundred eighty))~~ 180 days during the school year in any one assignment.

~~((iv))~~ ~~If a district, educational service district, or approved private school employs a teacher holding a substitute certificate in any one assignment for more than thirty working days, then the district, educational service district, or approved private school must within twenty working days develop a plan of professional learning for the individual that is appropriate to the assignment, designed to support their professional growth, and enhance instructional knowledge and skills to meet district needs and assist students in meeting the state learning goals.~~

~~((e))~~ (3) Minimum requirements. The substitute certificate may be issued to:

~~((i))~~ (a) Teachers, educational staff associates, or administrators who hold or have held a regular state of Washington educator certificate; or

~~((ii))~~ (b) Persons who have completed state approved educator preparation programs for their role, if it is a role for which state-approved programs are required, and a bachelor's degree or higher at an accredited college or university as required for the initial or residency certificate for their role in chapter 181-79A WAC; or

~~((iii))~~ (c) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257; or

~~((iv))~~ (d) Persons who hold or have held a continuing career and technical education teacher certificate.

~~((d))~~ (4) Request requirements. The individual educator applies for the substitute certificate.

~~((e))~~ (5) Validity. The substitute certificate is valid for life.

OTS-5425.1

NEW SECTION

WAC 181-82-107 Assignment of substitute teachers. The assignment of substitute teachers in the basic program of education shall comply with the following:

(1) Individuals with the following valid teacher certificate or permit types may be assigned as a substitute teacher:

- (a) Substitute.
- (b) Emergency substitute.
- (c) Intern substitute.
- (d) Standard.
- (e) Initial.
- (f) Residency.
- (g) Continuing.
- (h) Professional.
- (i) Conditional.
- (j) Emergency.

(k) Transitional.

(2) If a district, educational service district, or approved private school employs a teacher as a substitute in any one assignment that is not a match with an endorsement on their respective certificate or permit for more than 30 working days, then the district, educational service district, or approved private school must within 20 working days develop a plan of professional learning for the individual that is appropriate to the assignment, designed to support their professional growth, and enhance instructional knowledge and skills to meet district needs and assist students in meeting the state learning goals.

WSR 24-20-042
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 24, 2024, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-033.

Title of Rule and Other Identifying Information: WAC 181-79A-244
Certificate renewal requirements.

Hearing Location(s): On November 14 2024, at 8 a.m., at The Heathman Lodge, Vancouver, Washington. Exact meeting location and a link to listen to the meeting virtually will be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: November 14, 2024.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8 a.m., Monday, November 11, 2024.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb.k12.wa.us, by Thursday, October 31, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To finish updating certificate renewal requirements to align with recent legislation.

Reasons Supporting Proposal: In 2024, state legislators identified a need for a more in-depth and expanded clock hour provider approval and review process and directed PESB to take on that work. PESB board members initially reviewed the majority of the WAC changes related to that work at the July 2024 PESB board meeting. There was one remaining section of the WAC that needed to be updated regarding clock hours but was unable to be initially considered in July by the PESB board due to the WAC already being opened for additional changes related to other PESB work. This rule will continue to help PESB establish the systems needed to carry out the legislative direction provided in the bill.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

Rule is necessitated by federal law, 50 U.S.C. 4025a.

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Nguyen, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-489-4471; Implementation: Jeffrey Youde, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-870-0143; and Enforcement: Erica Hernandez-Scott, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-890-2443.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules 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.

September 24, 2024
Michael Nguyen
Rules Coordinator

OTS-5827.1

AMENDATORY SECTION (Amending WSR 24-15-123, filed 7/23/24, effective 8/23/24)

WAC 181-79A-244 Certificate renewal requirements. Certificate renewal requirements include the following:

(1) **Equity-based school practices.** Applications for renewal dated July 1, 2023, and beyond, for the certificate types and roles as indicated in (a) and (b) of this subsection, must demonstrate completion of professional learning focused on equity based school practices aligned with the cultural competency, diversity, equity, and inclusion (CCDEI) standards under WAC 181-85-204.

(a) Completion of at least 15 continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing teacher and CTE teacher certificates.

(b) Completion of at least 10 continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing principal, program administrator, superintendent, and CTE director certificates.

(c) Individuals holding at least one valid, expiration dated administrator certificate under (b) of this subsection are only required to meet the equity-based school practices requirement for administrators when renewing or reinstating a teacher certificate under (a) of this subsection.

(d) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet the equity-based school practices requirement by maintaining a valid National Board Certificate.

(e) A professional growth plan with at least one goal aligned to the standards in this subsection meets the equity-based school practices requirement.

(2) **National Professional Standards for Education Leaders.** Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of 10 continuing education credit hours of professional learning focused on the National Policy Board for Educational Administration (NPBEA) Professional Standards for Educational Leaders (PSEL). A professional growth plan with at least one goal aligned to the PSEL standards meets the certificate renewal requirement in this subsection.

(3) **Providers for professional learning in equity-based school practices and National Professional Standards for Education Leaders.** Professional learning under subsections (1) and (2) of this section must be provided by one or more of the following organizations. These

organizations may only provide the professional learning for as long as they maintain status as a Washington state approved in-service education agency under chapter 181-85 WAC.

- (a) Association of Washington school principals;
- (b) Office of the superintendent of public instruction;
- (c) Professional educator standards board-approved administrator or teacher preparation program providers;
- (d) Washington education association;
- (e) Washington state educational service districts; ((~~or~~))
- (f) Washington state school districts, tribal compact schools, approved charter schools, Washington school for the deaf, Washington school for the blind; or
- (g) Other organizations approved by the Washington professional educator standards board.

(4) Government-to-government relationships with federally recognized tribes.

(a) Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of five continuing education credit hours of professional learning focused on government-to-government relationships with federally recognized tribes.

(b) Professional learning related to government-to-government relationships with federally recognized tribes must be provided by one or more subject matter experts approved by the governor's office on Indian affairs in collaboration with the tribal leaders congress on education and the office of native education in the office of the superintendent of public instruction.

(c) Completion of a professional growth plan (PGP) may not be used to meet the requirement for professional learning in government-to-government relationships.

(5) Science, technology, engineering, math (STEM) integration. Applications for certificate renewal must demonstrate completion of at least 15 continuing education credit hours, or at least one goal from an annual professional growth plan, emphasizing the integration of science, technology, engineering, and/or mathematics instruction under RCW 28A.410.2212.

(a) This renewal requirement applies to teachers in the following areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Specific endorsements in these endorsement areas are as published by the professional educator standards board.

(b) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet this requirement by maintaining a valid National Board Certificate.

(6) Suicide prevention training requirement. Renewal of certificates, and issuance of professional certificates, for school counselors, school psychologists, school nurses, and school social workers requires completion of suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in this section.

Approved trainings meeting this suicide prevention training requirement will be as published by the professional educator standards board. The training program must be at least three hours in length. The professional educator standards board will consider these training programs as continuing education credit hours.

(7) Washington state department of health licenses.

(a) Holding a valid license as a physical therapist under chapter 18.74 RCW is a requirement for renewal of school physical therapist educational staff associate (ESA) certificate.

(b) Holding a valid license as an occupational therapist under chapter 18.59 RCW is required for renewal of school occupational therapist ESA certificates.

(c) Holding a valid license as a registered nurse (RN) under chapter 18.79 or 18.80 RCW is a requirement for renewal of school nurse ESA certificates.

(8) National certificates related to educational staff associate roles.

(a) Holding a valid Board Certified Behavior Analyst (BCBA) certificate from the Behavior Analyst Certification Board (BACB), or other national certificate as approved by the professional educator standards board, is a requirement for renewal of School Behavior Analyst ESA certificates.

(b) Holding a valid Certified Orientation and Mobility Specialist (COMS) Certificate from Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP), or, a valid National Orientation and Mobility Certification (NOMC) from the National Blindness Professional Certification Board (NBPCB), is a requirement for renewal of school Orientation and Mobility Specialist ESA Certificates.

(9) Continuing education role requirements. Except as otherwise required in Title 181 WAC, continuing education for the following roles must relate to the described areas.

(a) CTE teacher. Continuing education credit hours for renewal of CTE teacher certificates must relate to career and technical education methods, including those described in RCW 28A.700.010 and WAC 181-77A-165, or to the subject matter certified to teach.

(b) CTE director. Continuing education credit hours for renewal of CTE director certificates must relate to career and technical education, or supervisory or managerial subjects.

(c) School counselor. Continuing education credit hours for renewal must relate to:

(i) American School Counseling Association (ASCA) Professional Standards and Competencies; or

(ii) School Counselor Standards published by the National Board for Professional Teaching Standards (NBPTS).

(d) School psychologist. Continuing education credit hours for renewal certificates must relate to the National Association of School Psychologists (NASP) Professional Practices.

WSR 24-20-065

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed September 26, 2024, 12:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-030.

Title of Rule and Other Identifying Information: Chapter 172-108 WAC, Adjudicative proceedings.

Hearing Location(s): On November 22, 2024, at 12:00 p.m., at 215A Tawanka Commons, Eastern Washington University (EWU), Cheney, WA 99004.

Date of Intended Adoption: December 13, 2024.

Submit Written Comments to: Annika Scharosch, 211 Tawanka, Cheney, WA 99004, email ascharosch@ewu.edu, website <https://inside.ewu.edu/policies>, beginning October 1, 2024, at 8:00 a.m., by 5:00 p.m. on November 22, 2024.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email ascharosch@ewu.edu, by November 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating rules to reflect changes to the student conduct code, chapter 172-121 WAC, and a new code, Discrimination and Title IX violations by students, chapter 172-125 WAC, as well as changes to Title IX procedures. 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 consistent with the requirements of Title VI and Title IX.

Reasons Supporting Proposal: These changes are being made to comply with 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, 34 C.F.R. Part 106.

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; 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(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: These changes impact internal WSU procedures for addressing the conduct of students. They do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 26, 2024

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Business Services

OTS-5548.1

AMENDATORY SECTION (Amending WSR 21-01-104, filed 12/11/20, effective 1/11/21)

WAC 172-108-040 Formal adjudicative proceedings. (1) Eastern Washington University utilizes a formal adjudicative proceeding for certain student conduct proceedings as identified in chapters 172-121 and 172-125 WAC, and certain academic integrity code proceedings as identified in chapter 172-90 WAC. The procedural rules for these formal adjudicative proceedings are contained in the student conduct code, chapter 172-121 WAC, discrimination and Title IX violations by students code, chapter 172-125 WAC, and the academic integrity code, chapter 172-90 WAC. In all other cases, Eastern Washington University only utilizes formal adjudicative proceedings when required by RCW 34.05.413 through 34.05.476 (~~or for the adjudication of formal Title IX complaints against employees as set forth in university policy~~).

(2) An application for a formal adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Eastern Washington University; Tawanka 211, Cheney, WA 99004-2496. Written application for a formal adjudicative proceeding in response to the institution's action must be submitted to the above address within (~~twenty-one~~) 21 calendar days of the action, unless otherwise provided by statute or rule.

AMENDATORY SECTION (Amending WSR 21-12-034, filed 5/25/21, effective 6/25/21)

WAC 172-108-050 Brief adjudicative proceedings. In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Tawanka 211; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within (~~twenty-one~~) 21 calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

(1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;

(2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;

- (3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, (~~formal Title IX complaints,~~) or an allegation of felony-level (~~sexual~~) misconduct. In addition to the rules identified below, these proceedings are governed by chapters 172-121 and 172-125 WAC;
- (4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;
- (5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;
- (6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC;
- (7) Library fines and charges;
- (8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules as detailed in WAC 172-108-100;
- (9) Administrative decisions regarding statutorily mandated tuition and/or fee waivers;
- (10) Research integrity violations in accordance with EWU Policy 302-05 when required by federal law;
- (11) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;
- (12) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;
- (13) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;
- (14) Denial of work study or termination from a work study position when required by federal law;
- (15) Notice against trespass issued per WAC 172-122-200;
- (16) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;
- (17) Fines assessed under a university housing agreement; and
- (18) Penalties imposed for violations of pet control regulations in accordance with chapter 172-115 WAC.

WSR 24-20-072

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed September 27, 2024, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-115.

Title of Rule and Other Identifying Information: WAC 182-550-3800 Rebasng.

Hearing Location(s): On November 5, 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_yD-r9EuYSnSoSXRf38FcTQ. 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: November 6, 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 September 30, 2024, 8:00 a.m., by November 5, 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 October 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to provide more general language due to frequent changes of percentages and dollar amounts. Added psychiatric per diem rate information and psychiatric unit-specific budget target adjuster. HCA will only do cost-based rates once per year; an average is applied if contracting period is between fiscal years.

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: Abby Cole, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1835.

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 from Regulatory Fairness Act requirements:

Is fully exempt.

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

proposed rule does not impose more-than-minor costs on small businesses.

September 27, 2024
Wendy Barcus
Rules Coordinator

OTS-5846.3

AMENDATORY SECTION (Amending WSR 23-20-048, filed 9/28/23, effective 10/29/23)

WAC 182-550-3800 Rebasing. The medicaid agency redesigns (rebases) the medicaid inpatient payment system as needed. The base inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis. As part of the rebasing, the agency does all of the following:

(1) Gathers data. The agency uses the following data resources considered to be the most complete and available at the time:

(a) One year of paid claim data from the agency's medicaid management information system (MMIS). The agency excludes:

(i) Claims related to state programs and paid at the Title XIX reduced rates from the claim data; and

(ii) Critical access hospital claims paid per WAC 182-550-2598; and

(b) The hospital's most current medicare cost report data from the health care cost report information system (HCRIS) maintained by the Centers for Medicare and Medicaid Services (CMS). If the hospital's medicare cost report from HCRIS is not available, the agency uses the medicare cost report provided by the hospital.

(c) FFS and managed care encounter data.

(2) Estimates costs. The agency (~~uses one of two methods to estimate costs. The agency may perform an aggregate cost determination~~) estimates costs by multiplying the ratio of costs-to-charges (RCC) by the total billed charges (~~, or the agency may use the following detailed costing method:~~

~~(a) The agency identifies routine and ancillary cost for operating capital, and direct medical education cost components using different worksheets from the hospital's medicare cost report;~~

~~(b) The agency estimates costs for each claim in the dataset as follows:~~

~~(i) Accommodation services. The agency multiplies the average hospital cost per day reported in the medicare cost report data for each type of accommodation service (e.g., adult and pediatric, intensive care unit, psychiatric, nursery) by the number of days reported at the claim line level by type of service; and~~

~~(ii) Ancillary services. The agency multiplies the RCC reported for each ancillary type of services (e.g., operating room, recovery room, radiology, laboratory, pharmacy, or clinic) by the allowed charges reported at the claim line level by type of service; and~~

~~(c) The agency uses the following standard cost components for accommodation and ancillary services for estimating costs of claims:~~

- ~~(i) Routine cost components:~~
 - ~~(A) Routine care;~~
 - ~~(B) Intensive care;~~
 - ~~(C) Intensive care-psychiatric;~~
 - ~~(D) Coronary care;~~
 - ~~(E) Nursery;~~
 - ~~(F) Neonatal ICU;~~
 - ~~(G) Alcohol/substance abuse;~~
 - ~~(H) Psychiatric;~~
 - ~~(I) Oncology; and~~
 - ~~(J) Rehabilitation.~~
- ~~(ii) Ancillary cost components:~~
 - ~~(A) Operating room;~~
 - ~~(B) Recovery room;~~
 - ~~(C) Delivery/labor room;~~
 - ~~(D) Anesthesiology;~~
 - ~~(E) Radio, diagnostic;~~
 - ~~(F) Radio, therapeutic;~~
 - ~~(G) Radioisotope;~~
 - ~~(H) Laboratory;~~
 - ~~(I) Blood administration;~~
 - ~~(J) Intravenous therapy;~~
 - ~~(K) Respiratory therapy;~~
 - ~~(L) Physical therapy;~~
 - ~~(M) Occupational therapy;~~
 - ~~(N) Speech pathology;~~
 - ~~(O) Electrocardiography;~~
 - ~~(P) Electroencephalography;~~
 - ~~(Q) Medical supplies;~~
 - ~~(R) Drugs;~~
 - ~~(S) Renal dialysis/home dialysis;~~
 - ~~(T) Ancillary oncology;~~
 - ~~(U) Cardiology;~~
 - ~~(V) Ambulatory surgery;~~
 - ~~(W) CT scan/MRI;~~
 - ~~(X) Clinic;~~
 - ~~(Y) Emergency;~~
 - ~~(Z) Ultrasound;~~
 - ~~(AA) NICU transportation;~~
 - ~~(BB) GI laboratory;~~
 - ~~(CC) Miscellaneous; and~~
 - ~~(DD) Observation beds).~~

(3) Specifies resource use with relative weights. The agency uses national relative weights designed by ((3MTM)) Solventum Corporation as part of its all-patient refined-diagnostic related group (APR-DRG) payment system. The agency periodically reviews and determines the most appropriate APR-DRG grouper version to use.

(4) Calculates base payment factors. The agency calculates the average, or base, DRG conversion factor and per diem rates. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter. The agency models the rebased system to be budget neutral on a prospective basis, including global adjustments to the budget target determined by the agency. The agency ensures that base DRG conversion factors and

per diem rates are sufficient to support economy, efficiency, and access to services for medicaid recipients. The agency will publish base rate factors on its website.

~~(5) ((To maintain budget neutrality, the agency makes global adjustments as needed.~~

~~(a) Claims paid under the DRG, rehab per diem, and withdrawal management per diem payment methods were reduced to support an estimated \$3,500,000 increase in psychiatric payments to acute hospitals.~~

~~(b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by \$3,500,000.~~

~~(c) Effective for dates of admission on and after October 1, 2017, the agency increased psychiatric per diem rates as directed by the legislature. The increase applies to any hospital with 200 or more psychiatric bed days.~~

~~(i) The agency prioritized the increase for hospitals not currently paid based on provider-specific costs using a similar methodology to set rates for existing inpatient facilities utilizing cost report information for hospital fiscal years ending in 2016.~~

~~(ii) The distribution of funds for each fiscal year is as follows:~~

~~(A) Free-standing psychiatric hospitals receive 68.15 percent of the statewide average cost per day.~~

~~(B) All other hospitals receive the greater of 78.41 percent of their provider-specific cost, or their current medicaid psychiatric per diem rate.~~

~~(iii) The agency set the increased rates to assure that the distribution of funds does not exceed the amounts provided by the legislature.~~

~~(iv)) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:~~

~~(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.~~

~~(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then~~

~~(ii) The amount in (a) (i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then~~

~~(iii) The agency adds the nonlabor portion of the base rate to the amount in (a) (ii) of this subsection to produce a hospital-specific wage adjusted factor.~~

~~(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and~~

~~(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.~~

~~(6) To maintain budget neutrality, the agency makes global adjustments as needed.~~

~~(7) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (5) and (6) of this section.~~

(8) When rebasing psychiatric per diem rates, the agency uses medicaid claims data and medicare cost report data from the calendar year base period ending two years prior to the effective date of rebasing, using the methodology described for psychiatric per diem rates effective January 1, 2024.

(a) When rebasing, the agency will determine new budget target adjusters, not to exceed a factor of 100 percent.

(b) Hospital psychiatric units with at least 200 Washington medicaid bed days in the base period will receive a cost-based rate with a psychiatric unit-specific budget target adjuster applied.

(c) Hospital psychiatric units with less than 200 Washington medicaid psychiatric bed days in the base period will receive a psychiatric per diem rate equal to the statewide average per diem.

(d) The agency conducts annual reviews for updated cost information to determine whether new ((and)) or existing providers continue to meet the 200 or more bed days criteria.

~~((v) The agency will apply the same cost percentage criteria for future rebasing of the psychiatric per diem rates.~~

~~(6) Effective July 1, 2020,))~~ (9) The agency sets psychiatric per diem rates specific to long-term civil commitments separately from other psychiatric per diem rates.

(a) In order to qualify for a provider-specific long-term civil commitment psychiatric per diem, the provider must be contracted with the agency to provide long-term civil commitment beds.

(b) The agency sets the provider-specific rate at the ~~((time of contracting))~~ beginning of the state fiscal year. If a provider contracts with the agency during the state fiscal year, their initial rate will be set at the greater of:

(i) The in-state, state-wide average long-term psychiatric per diem for their category of hospital; or

(ii) Their current provider-specific short-term psychiatric per diem.

(c) The agency sets the rate for acute care hospitals under chapter 70.41 RCW with distinct psychiatric units as follows:

(i) Hospitals that have a 12-month medicare cost report with at least 200 psychiatric bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the costs documented on the medicare cost report.

(ii) Hospitals that do not have a 12-month cost report with at least 200 bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the greater of:

(A) The average long-term psychiatric per diem of all acute care hospitals providing long-term psychiatric services in-state ~~((, provider-specific long-term psychiatric per diem rates, or the)); or~~

(B) Their current provider-specific short-term psychiatric per diem.

(iii) The long-term psychiatric rate is applied to ~~((any hospital that accepts patients committed to a psychiatric facility for a period of 90 days or greater.))~~ agency-contracted hospitals for long-term psychiatric services. The acute care hospital long-term psychiatric per diem will be rebased annually at the beginning of the state fiscal year using most recently available medicare cost report data.

(iv) The agency sets the rate so as not to exceed the amount provided by the legislature.

(d) The agency sets the rates for free-standing psychiatric hospitals under chapter 71.12 RCW as follows:

~~(i) Hospitals ((without an existing long-term rate receive a per diem rate equivalent to either the greater of the short-term rate or the state-wide average long-term psychiatric rate for free-standing psychiatric hospitals.~~

~~(ii) Hospitals that have an existing long-term per diem will continue to receive the \$940 established for July 1, 2021)) will receive a long-term psychiatric per diem rate as approved by the legislature.~~

~~(ii) In addition to ((the \$940)) a long-term psychiatric per diem rate, the hospital may annually submit supplemental cost data ((with the cost report)) to the agency for consideration by May 1st for the upcoming state fiscal year. If approved, the agency will make appropriate adjustments to the medicaid inpatient long-term psychiatric per diem payment rate of the hospital. Adjustment of costs may include any of the following:~~

~~(A) Costs associated with professional services and fees not accounted for in the hospital's medicare cost report or reimbursed separately;~~

~~(B) Costs associated with the hospital providing the long-term psychiatric patient access to involuntary treatment court services that are not reimbursed separately;~~

~~(C) Other costs associated with caring for long-term psychiatric patients that are not reimbursed separately.~~

~~(iii) The agency sets the rate so as to not exceed the amount provided by the legislature.~~

~~((7) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:~~

~~(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.~~

~~(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then~~

~~(ii) The amount in (a) (i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then~~

~~(iii) The agency adds the nonlabor portion of the base rate to the amount in (a) (ii) of this subsection to produce a hospital-specific wage adjusted factor.~~

~~(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and~~

~~(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.~~

~~(8) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (6) and (7) of this section.)~~

WSR 24-20-076

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed September 27, 2024, 11:55 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: Chapter 172-330 WAC, Small works roster.

Hearing Location(s): On November 22, 2024, at 12:00 p.m., at 215A Tawanka Commons, Eastern Washington University (EWU), Cheney, WA 99004.

Date of Intended Adoption: December 13, 2024.

Submit Written Comments to: Annika Scharosch, 211 Tawanka, Cheney, WA 99004, email ascharosch@ewu.edu, website <https://inside.ewu.edu/policies>, beginning October 1, 2024, at 8:00 a.m., by 5:00 p.m. on November 22, 2024.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email ascharosch@ewu.edu, by November 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adopt procedures consistent with the model rules issued by the department of enterprise services for purposes of implementing and utilizing a small works roster.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 28B.35.120(12), 39.04.151.

Statute Being Implemented: RCW 39.04.151; chapter 200-330 WAC.

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

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(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: EWU is adopting internal small works roster procedures consistent with the model rules adopted by the department of enterprise services, chapter 200-330 WAC, and RCW 39.04.151.

Scope of exemption for rule proposal:

Is fully exempt.

September 27, 2024

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Business Services

OTS-5896.1

**Chapter 172-330 WAC
SMALL WORKS ROSTER**NEW SECTION

WAC 172-330-010 Purpose and authority. This chapter of the Washington Administrative Code is adopted pursuant to RCW 39.04.151. This chapter sets forth the procedures for Eastern Washington University's (EWU) use of small works rosters for different specialties, categories of anticipated work, and geographical locations consistent with RCW 39.04.151 and the model rules issued by the department of enterprise services in chapter 200-330 WAC. The vice president for business and finance, or designee, is authorized to establish additional procedures for EWU's use of statewide and independent small works rosters.

NEW SECTION

WAC 172-330-020 Definitions. As used in this chapter the terms:

- (1) "Contracting agency" means EWU.
- (2) "Independent roster" means a small works roster established by EWU by itself or with another contracting agency.
- (3) "MRSC" means the municipal research and services center.
- (4) "OMWBE" means the office of minority and women's business enterprises.
- (5) "Publicly available" means published on EWU's public website.
- (6) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of EWU, or which is by law a lien or charge on any property therein. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 39.102.060(4) or other development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).
- (7) "Statewide roster" means the statewide small works roster developed by the department of commerce through MRSC.

NEW SECTION

WAC 172-330-030 Roster requirements. EWU is encouraged to use the statewide roster to promote administrative efficiency. The statewide roster must meet all of the requirements set forth in WAC 200-330-035. If EWU chooses to create its own small works roster, the roster must meet the requirements of RCW 39.04.151, 39.04.152, and the following:

- (1) Roster inclusion. All qualified responsible, licensed contractors must be included on the roster at their request. Potential

contractors must complete an application with EWU to be placed on the roster. Applications may be submitted at any time.

(2) Contact information. Contractors on the roster must designate an official email to receive bid notifications from EWU.

(3) Contractor recordkeeping. Contractors included on EWU's roster must keep records of applicable licenses, certifications, registrations, bonding, and insurance as required by RCW 39.04.350. This information must be made immediately available to EWU upon request.

(4) Small and diverse business certification.

(a) At the time of a contractor's application to be included on the roster, the contractor must indicate its certification status with OMWBE and the department of veterans affairs.

(b) EWU must be able to download data from OMWBE and the department of veterans affairs to obtain current information on contractor certifications at the time of solicitation.

(5) Denial or removal of contractors from small works roster. A contractor may be denied placement on, or after such placement, may be removed from a small works roster for any of the following reasons:

(a) The contractor has failed to respond to five solicitations for bids on jobs offered through the small works roster;

(b) The contractor does not meet the responsible bidder provisions contained in RCW 39.04.350; or

(c) The contractor does not meet supplemental criteria identified by EWU for a specific project consistent with RCW 39.04.350.

NEW SECTION

WAC 172-330-100 Small works competitive contracting. (1) Small works bid process. Whenever the estimated cost of construction for a project does not exceed \$350,000 or the current threshold set in RCW 39.04.152, excluding state sales tax, EWU may use the small works competitive contracting process. EWU may either use the statewide roster or establish its own small works roster. Under the small works bid process, contractors included on a small works roster are invited to submit bids for small works projects. No project shall be broken into units or phases for the purpose of allowing the project to qualify for a small works roster process.

(2) Requirements. The small works bid process must meet all of the requirements of RCW 39.04.151, 39.04.152, and chapter 200-330 WAC. This includes, but is not limited to, the following requirements:

(a) Invitations to bid.

(i) Invitations to bid must include:

(A) Plans, specifications, and an estimate of the work sufficient to define the work and for the contractor to generate a bid; and

(B) A date and time for receipt of bids through the designated bidding system.

(ii) EWU must provide an invitation to bid to all contractors on the appropriate roster category associated with the work to be performed.

(b) Estimated cost. EWU's estimate of the work must be equal to or under the cost limit specified in RCW 39.04.152 to solicit bids under the small works competitive contracting process. EWU may award contracts for more than this amount if the contract cost is not excessive or does not constitute a cardinal change. A general guideline is

that 10 percent or less of the statutory bid limit will not constitute a cardinal change.

(c) Change orders. Change orders may be added to the contract amount at the discretion of EWU if the change orders are necessary to complete the work described in the plans, specifications, and estimate, or do not constitute a cardinal change. EWU shall not use change orders to avoid the statutory bid limit for this type of solicitation.

(d) Retainage. Retainage may be waived or reduced by EWU. If EWU waives or reduces retainage, the waiver or reduction must be indicated in the invitation to bid at the time of solicitation, and EWU then assumes liability for any unpaid wages and taxes.

(e) Bid acceptance. EWU:

(i) Must accept written quotations or accept quotations through electronic methods such as electronic mail or an electronic bid system;

(ii) Shall not establish a formal bid opening; and

(iii) Must make bid tabs publicly available upon request. Bid tabulations may be requested by emailing EWU's public records manager at prr@ewu.edu.

NEW SECTION

WAC 172-330-200 Small works direct contracting. (1) Direct contracting process. In lieu of following a formal public works bidding process or the small works competitive contracting process outlined in WAC 172-330-100, EWU may enter into direct contracts with a contractor by soliciting a quote from a single selected contractor on the state-wide roster or EWU's independent roster and negotiate a final price. Consistent with the limits identified in RCW 39.04.151 and 39.04.152, this process may only be used when EWU's estimate for the work is equal to or less than \$150,000, not including sales tax, or any future limit set by the legislature consistent with RCW 39.04.152 (4) (b).

(2) Requirements. The small works direct contracting process must meet the requirements of RCW 39.04.151, 39.04.152, and chapter 200-330 WAC. This includes, but is not limited to, the following requirements:

(a) Administrative efficiency. Direct contracting is intended to be a quick and administratively efficient process with a focus on promoting the use of small and diverse businesses. This is not a competitive solicitation.

(b) Diverse business utilization plan. EWU must establish a small, minority, women, and veteran-owned business utilization plan prior to using the direct contracting process.

(c) Contractor rotation.

(i) EWU must rotate direct contracting opportunities among the available contractors on the appropriate roster.

(ii) EWU must not favor certain contractors by repeatedly awarding contracts to contractors without documented attempts to directly contract with other contractors.

(iii) EWU must adopt a policy regarding how contract opportunities will be rotated to avoid favoritism in direct contracting. This policy will be posted on EWU's website.

(iv) The rotation policy must, at a minimum, provide the following:

(A) Contractors that have been issued a contract under the direct contracting process must not be offered a future contract until all

other contractors on the roster have received a solicitation for a quote through the direct contracting process; and

(B) EWU must consider nonresponsive solicitations and the inability to negotiate an agreed price in their rotation policy.

(d) Soliciting quotes.

(i) Solicitations for a quote under the direct contracting process must include the following:

(A) A description of the work to be performed sufficient for the contractor to develop a price;

(B) The date EWU must receive the contractor's quote; and

(C) Any timeline requirements for mobilization.

(ii) When six or more contractors certified as public works small business enterprises by OMWBE are listed on the appropriate roster, EWU must solicit a quote from a certified public works small business enterprise contractor on the roster in accordance with EWU's rotation policy.

(iii) When five or fewer contractors certified as public works small business enterprises by OMWBE are listed on the appropriate small works roster for this type of work, EWU may solicit a quote from any contractor on the roster in accordance with the agency's rotation policy.

(e) Negotiated price.

(i) A contract price must be negotiated with a single selected contractor from the statewide or independent roster. The negotiated price should be based on the quote from the contractor and available project funds identified by EWU.

(ii) If the contractor and the contracting agency cannot agree on a price, EWU may elect to end negotiations and move to the next contractor on the rotation in accordance with EWU's rotation policy.

(iii) Once a price is established and all other requirements are met, EWU may proceed with award and execution of the contract.

(iv) EWU is prohibited from bid shopping using the direct contracting process. If EWU and the next contractor on the rotation cannot agree on a contract price, EWU must competitively bid the work if it intends to proceed with the work.

(f) Notice of award. EWU must provide notice of a small works contract award to all other contractors on the appropriate roster of award.

(g) Department of labor and industries portal. EWU is required to initiate the small works project using labor and industries' awarding agency portal when awarding a contract under the direct contracting process.

(h) Recordkeeping. EWU must keep documented records of their efforts under the direct contracting process, including records of the following:

(i) The contractors EWU solicited for the contract;

(ii) Whether the contractor responded to the solicitation;

(iii) Records of price negotiations;

(iv) The contracts that were awarded and to whom; and

(v) Records documenting the reasons a negotiated price could not be reached.

WSR 24-20-079

PROPOSED RULES

BELLEVUE COLLEGE

[Filed September 27, 2024, 12:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-028.

Expedited Rule Making—Proposed notice was filed as WSR 24-13-046.

Title of Rule and Other Identifying Information: Policy 6120, Use of college facilities for expressive activity.

Hearing Location(s): On November 7, 2024, at 9:00 - 10:00 a.m., via Zoom <https://bellevuecollege.zoom.us/j/81112531610>, Meeting ID 811 1253 1610.

Date of Intended Adoption: January 7, 2025.

Submit Written Comments to: Loreen McRea Keller, 3000 Landerholm Circle S.E., A-201, Bellevue, WA 98007, email loreen.keller@bellevuecollege.edu, beginning September 18, 2024, by November 4, 2024.

Assistance for Persons with Disabilities: Contact disability resource center, TTY 425-564-6189, by November 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue College last updated its expressive activity policy in 2005. Since then, colleges and universities around the country have faced increasing need to clarify the distinction between free speech and civil disobedience, as it relates to the safe operations of a campus.

Reasons Supporting Proposal: The purpose of a college is to foster the free exchange of ideas. This policy balances the need to provide ample opportunity for free expression on campus with the need to preserve the efficient and effective functioning of Bellevue College. In the language of First Amendment jurisprudence, that means the establishment of time, place, and manner regulations. The critical feature of such regulations is that they be content- and viewpoint-neutral. They do not distinguish between expressive activities on the basis of the messages being purveyed. Rather, they circumscribe how expressive activities can be conducted so that they do not unnecessarily interfere with the activities of other members of the campus community.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Loreen McRea Keller, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-6155; Enforcement: Vice President of Administrative Services, 3000 Landerholm Circle S.E., B-126B, Bellevue, WA 98007, 425-564-6155.

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. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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

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

Scope of exemption for rule proposal:
Is fully exempt.

September 27, 2024
Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-5491.2

Chapter 132H-142 WAC
((FIRST AMENDMENT ACTIVITIES FOR COMMUNITY COLLEGE DISTRICT VIII)) USE
OF COLLEGE PROPERTY FOR EXPRESSIVE ACTIVITY

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-010 Title. WAC 132H-142-010 through 132H-142-060 shall be known as use of ((Community College District VIII facilities by college groups and noncollege groups for first amendment activities)) college property for expressive activity.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-015 Definitions. ~~((For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue Community College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.~~

~~For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Bellevue Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.~~

~~College facilities include all buildings, structures, grounds, office space and parking lots.)~~ (1) "College groups" means individuals or groups who are currently enrolled students or current employees of Bellevue College, or guests of Bellevue College who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(2) "College property" shall include, but not be limited to, all campuses of the college, wherever located, and all college-controlled, owned, rented, leased, occupied, or used land, buildings, structures, property, vehicles, equipment, office space, parking lots, and any

other property utilized by the college for any education programs and activities.

(3) "Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspective, or viewpoints.

(4) "Limited public forum" means the college is a limited public forum for noncollege groups. ((The)) Limited public forum ((does)) locations do not include college property, buildings, or athletic fields. College buildings, rooms, and athletic fields may be rented in accordance with the college's ((facilities)) property use policy.

(5) "Noncollege groups" means individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue College and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

(6) "Public use areas" means those areas of each campus that the college has chosen to open as places where noncollege groups may assemble for expressive activity protected by the first amendment, subject to reasonable time, place, or manner restrictions.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-020 Statement of purpose. Bellevue ((Community)) College ((District VIII)) is an ((educational)) institution of higher education provided and maintained by the people of the state of Washington. The college reserves its property for activities that are related to its broad educational mission. College ((facilities are)) property is reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, substantially interferes with, or otherwise disrupts the normal activities ((for and)) to which the college's ((buildings, facilities and grounds are)) property is dedicated ((and said buildings, facilities and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities and grounds are not available for unlimited use by college groups, it is recognized that Bellevue Community College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein)). Accordingly, the college designates the outdoor common areas of the college as a limited public forum dedicated to the use of college

groups, subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college property. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups seeking to assemble in common areas of the campus for expressive activity. Bellevue College recognizes that college groups should be accorded the opportunity to utilize the property of the college to the fullest extent possible.

The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for expressive activities on campus:

- Building C courtyard between building C and D extending out from the fountain for groups less than 30; and
- South courtyard, just north of Carlson Theater if over 30 participants are expected.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-030 ((Request for use of facilities.)) Time, place, and manner restrictions. ((Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limited forums for those activities protected by the first amendment. Examples of first amendment activities would include, but not necessarily be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") are encouraged to provide notice to the student programs office no later than twenty-four hours prior to the event along with the following information:

- (1) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and
- (2) The name, address and telephone number of a contact person for the sponsoring organization; and
- (3) The date, time and requested location of the event; and
- (4) The nature and purpose of the event; and
- (5) The type of sound amplification devices to be used in connection with the event, if any; and
- (6) The estimated number of people expected to participate in the event.

Signs shall be no larger than three feet by five feet (3' x 5') and no individual may carry more than one sign.

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

~~College groups are encouraged to notify the student programs office no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.~~

~~College group events shall not last longer than eight hours from beginning to end. Noncollege events shall not last longer than five hours from beginning to end.~~

~~There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures for the purposes of personal habitation.~~

~~Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designed for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site.~~

~~Speech that does no more than propose a commercial transaction shall not occur in connection with the event.~~

~~College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:~~

- ~~• Such activities serve educational purposes of the college; and~~
- ~~• Such activities are under the sponsorship of a college department or office or officially chartered student club.~~

~~The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.~~

~~All fire, safety, sanitation or special regulations specified for the event are to be obeyed.~~

~~The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.~~

~~The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.~~

~~The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.~~

~~The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.~~

~~The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.~~

~~The event must also be in accordance with any other applicable college policies and regulations, regulations and policies of Bellevue Community College, local ordinances and/or state or federal laws.))~~

(1) Subject to the regulations and requirements of this policy, groups may use the campus limited forums for expressive activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Use of audio amplifying equipment is permitted only in locations and at times that will not disrupt, or disturb, or interfere with the normal conduct of college affairs including, but not limited to, the use of classrooms, offices, libraries, and laboratories; and previously scheduled college events or activities.

(3) Groups are encouraged to notify the campus public safety department no later than 24 hours in advance of an event. However, unscheduled events are permitted so long as the event does not materially disrupt any other function occurring at the facility.

(4) All sites used for expressive activity should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean up or for the repair of damaged property.

(5) All fire, safety, sanitation, or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of expressive activity conducted pursuant to this policy.

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or property, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees to the college.

(7) The event must not substantially and materially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees, or invitees to the college.

(8) There shall be no camping on college property. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(9) College property may not be used for commercial sales, solicitations, advertising, or promotional activities, unless:

(a) Such activities serve educational purposes of the college;
and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(10) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances, and state or federal laws.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-040 Additional requirements for noncollege groups.

The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that

more than ((five hundred)) 500 people will attend the college event or activity.

~~((College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in this policy.~~

The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus:

- ~~Building C courtyard area for groups less than thirty; and~~
- ~~Southern courtyard, just north of Carlson Theater if over thirty participants are expected.)~~ Noncollege groups may use designated public use areas identified in this policy for expressive activity between the hours of 7:00 a.m. and 10:00 p.m.

Noncollege groups that seek to engage in expressive activity on the designated public use area(s) are encouraged to provide notice to the campus public safety office no later than 24 hours prior to the event, along with the following information solely to ensure:

- (1) The area is not otherwise scheduled; and
- (2) To give the college an opportunity to assess any security needs:
 - (a) The name, address, and telephone number of a contact person for the individual, group, entity, or organization sponsoring the event; and
 - (b) The date, time, and requested location of the event; and
 - (c) The nature and purpose of the event; and
 - (d) The estimated number of people expected to participate in the event.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-050 ~~((The role of the president in first amendment decisions.))~~ **Distribution of materials.** ~~((The president of the college may authorize first amendment activities which are reasonably determined not to cause disruption of college activities despite a literal violation of this policy statement. Such determinations shall be made without consideration of the content or message of the first amendment activities.~~

~~The president of the college or designee may at any time, terminate, cancel or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.)~~ College groups may post information on bulletin boards, kiosks, and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. Compliance with relevant procedure(s) around posting of materials on campus is expected.

Noncollege groups may distribute materials only at the site designated for noncollege groups.

All posted materials shall be dated and posted in accordance with the manner provided at the site. Posted materials may remain posted for a duration agreed upon at time of approval, after which they will

be removed. Refer to procedures for posting materials on campus for additional detail.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-060 ((Criminal)) Trespass. ~~((Any person determined to be violating these regulations is subject to an order from the college public safety department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.))~~ Noncollege groups who violate these rules, or whose conduct jeopardizes the health or safety of others, or whose conduct unreasonably impedes the college in pursuit of its educational mission will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the college president or designee to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave. Such persons shall be subject to arrest under the criminal trespass provisions of chapter 9A.52 RCW or Bellevue municipal ordinance.

When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may appeal that decision by submitting to the college president by certified mail, return receipt requested, a letter stating the reasons the person should not be barred from college property. The college president or designee shall respond in writing within 15 calendar days with a final decision of the college. Absent exceptional circumstances as determined by the college president or designee, persons shall continue to be barred from college property while an appeal is pending.

Students, faculty, and staff of the college who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with this chapter or with other applicable rules, regulations, or policies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-142-025	First amendment activities and protection of the college mission.
WAC 132H-142-070	Posting of a bond and hold harmless statement.
WAC 132H-142-075	Trespass.

WSR 24-20-083
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 27, 2024, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-024.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to adopt chapter 388-487 WAC, SUN Bucks, including WAC 388-487-0010 What is the sun bucks program?, 388-487-0020 Is my child eligible for sun bucks?, and 388-487-0030 General information about sun bucks benefits.

Hearing Location(s): On November 5, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than November 6, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on October 2, 2024, by 5:00 p.m. on November 5, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by 5:00 p.m. on October 22, 2024.

Reasons Supporting Proposal: Adoption of these rules supports implementation of the summer electronic benefits transfer (EBT) program, also known as SUN Bucks. SUN Bucks is a new permanent program authorized under the Consolidated Appropriations Act, 2023 (H.R. 2617) to provide additional food benefits to certain eligible children for designated summer periods (beginning June 2024). Related emergency rules are currently in place under WSR 24-20-016.

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

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Troy Burgess, P.O. Box 45470, Olympia, WA 98504-5470, 360-584-5162.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

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

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

Scope of exemption for rule proposal:
Is fully exempt.

September 24, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5033.3

NEW SECTION

WAC 388-487-0010 What is the sun bucks program? The sun bucks program is the summer electronic benefits transfer (summer EBT) program that provides a one-time food benefit to eligible children during designated summer periods following the academic school year. Sun bucks is administered by the department of social and health services and is not bound by the same state or federal rules, regulations, or procedures governing basic food as described in WAC 388-400-0040.

The following definitions apply to this program:

(1) "Compulsory age" means the age children are required by law to attend school; in Washington this is between the ages of eight and 18.

(2) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(a) Receiving a benefit from a federal means tested assistance program, including supplemental nutrition assistance program, temporary assistance for needy families, food distribution program on Indian reservations, some medicaid programs; or

(b) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program.

(3) "Expungement" means removal of benefits due to nonuse after 122 days from the date sun bucks benefits were deposited into the EBT account.

(4) "Free or reduced-price meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act.

(5) "Income eligibility guidelines" means income limits to determine eligibility for free and reduced-price meals adjusted annually by the US department of agriculture food and nutrition service as required by the national school lunch act.

(6) "Sun bucks application" means an application available to households with potentially eligible children who do not automatically meet streamline certification criteria.

(7) "Sun bucks card" means the unique EBT card that accesses sun bucks food benefits issued to individual eligible children.

(8) "Streamline certified" means a child automatically approved for sun bucks because they meet the following criteria:

(a) A child, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program and school breakfast program during the school year, who:

(i) Is determined by the school to be eligible for free or reduced-priced school meals; or

(ii) Attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program and identified as eligible for free or reduced-price school meals using direct certification or a free or reduced-price school meals application.

(b) A child who meets compulsory age requirements and resides in a household receiving one of the following public assistance benefits:

(i) Temporary assistance for needy families as described in WAC 388-400-0005;

(ii) State funded assistance as described in WAC 388-400-0010;

(iii) Basic food as described in WAC 388-400-0040; or

(iv) The state funded food assistance program as described in WAC 388-400-0050.

(10) "Summer operational period" means the period between the end of the current school year and the start of the next school year, as determined by the state.

NEW SECTION

WAC 388-487-0020 Is my child eligible for sun bucks? (1) To be streamline certified for sun bucks benefits, a child must:

(a) Attend a school that participates in the national school lunch program or school breakfast program; and

(i) Is determined by the school to be eligible for free or reduced-price school meals; or

(ii) Who attends a school that operates the community eligibility provision or provision 2 lunch and breakfast program and identified as eligible for free or reduced-price meals using direct certification or a free or reduced-price school meals application.

(b) Meet compulsory age requirements and reside in a household receiving one of the following public assistance benefits:

(i) Temporary assistance for needy families as described in WAC 388-400-0005;

(ii) State funded assistance as described in WAC 388-400-0010;

(iii) Basic food as described in WAC 388-400-0040; or

(iv) The state funded food assistance program as described in WAC 388-400-0050.

(2) Children who are not streamline certified must submit a sun bucks application during the summer operational period and must meet the following criteria:

(a) Attend a school that participates in the national school lunch program or school breakfast program; and

(b) Meet income eligibility guidelines for free or reduced-price school meals.

(i) Income eligibility guidelines change annually on July 1.

(ii) The income eligibility guidelines in effect on the date of application are used to determine eligibility.

(3) Applications received after the end of the summer operational period will be considered for sun bucks in the following year.

(4) If information on an application is questionable, verification may be requested and must be provided within 30 days of the date of application.

(5) Children approved for sun bucks receive a notice of approval describing their eligibility and other information related to the program.

NEW SECTION

WAC 388-487-0030 General information about sun bucks benefits.

(1) The amount of sun bucks each eligible child will receive is \$120 for the summer of 2024 and will be adjusted annually for inflation.

(2) Sun bucks benefits are deposited into an account accessible with a designated sun bucks card. Each sun bucks card is:

(a) Linked to a sun bucks account for each eligible child; and

(b) Mailed to the last known address as reported by the parent or caregiver to either:

(i) The child's school if directly certified for free or reduced-price meals; or

(ii) The department for the eligible child's cash or food assistance household.

(c) It is the parent's or caregiver's responsibility to accurately and timely report any address changes to the child's school and to the department. The department or school is not responsible for the expungement of benefits due to unreceived sun bucks notices or cards sent through the mail.

(3) To use a sun bucks account:

(a) The sun bucks EBT card can be used by the eligible child or responsible household member, such as a parent or caregiver on behalf of the eligible child, to purchase eligible food items.

(b) A personal identification number (PIN) must be created to use the sun bucks card. Families are responsible for keeping the sun bucks card and PIN of an eligible child in a safe and secure place.

(c) Sun bucks benefits are only accessed from the sun bucks card and cannot be transferred to a bank account or issued as a check.

(4) The purpose of sun bucks benefits is to help low-income families have a more nutritious diet by providing food benefits to eligible children during the summer months between academic school years.

(a) Any remaining sun bucks benefits not used within 122 days from the date of deposit into each eligible child's account are expunged.

(b) Sun bucks benefits cannot be replaced, redeemed, expunged, lost, or stolen due to fraudulent activity or use.

(c) Sun bucks benefits are used to buy food items for an eligible child from a food retailer authorized to accept supplemental nutrition assistance program benefits.

(d) Intentional misuse of sun bucks benefits may be subject to fines or legal action including criminal prosecution.

(5) The household must request a hearing within 90 days of the end of the summer operational period when disagreeing with a decision explained in the notice.

(6) Children cannot receive sun bucks from more than one state at a time for the same summer operational period.

WSR 24-20-090

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed September 29, 2024, 6:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-15-084.

Title of Rule and Other Identifying Information: Standards for designation of 988 contact hubs, chapter 246-350 WAC. The department of health (department) is proposing a new chapter of rules to implement E2SHB 1477 (chapter 302, Laws of 2021). The rules establish standards for designation of crisis call centers as crisis hubs within the 988 national suicide prevention and mental health crisis hotline system.

Hearing Location(s): On November 5, 2024, at 9:00 a.m., at the Department of Health, Town Center 2, Rooms 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_Hk3jXkFkSdGXyjG7a_H8Dg. After registering, you will receive a confirmation email containing information about joining the webinar. The department will be offering a hybrid public hearing. Participants may attend virtually or in person at the physical location. You may also submit comments in writing.

For individuals that would like to request American Sign Language or other services, please contact Me'Kyel Bailey by October 22, 2024.

Date of Intended Adoption: November 12, 2024.

Submit Written Comments to: Me'Kyel Bailey, P.O. Box 47830, Olympia, WA 98504-7830, email mekyel.bailey@doh.wa.gov, beginning date and time of filing, by November 5, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Me'Kyel Bailey, phone 360-764-9161, TTY 711, email mekyel.bailey@doh.wa.gov, by October 22, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes standards that crisis centers must meet to be designated by the department as 988 contact hubs. No existing rules would be changed.

Reasons Supporting Proposal: E2SHB 1477 and E2SHB 1134 (chapter 454, Laws of 2023) establish 988 contact hubs as a means to streamline crisis care services and referrals. E2SHB 1134, codified in RCW 71.24.890(3), requires the department to develop rules setting standards which crisis centers must meet in order for the department to designate them as hubs. The rules will help ensure that crisis response has consistency across hubs and is able to meet minimum service standards.

Statutory Authority for Adoption: E2SHB 1477 (chapter 302, Laws of 2021), E2SHB 1143; RCW 43.70.040(1) and 71.24.890(3).

Statute Being Implemented: RCW 71.24.890(3).

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Me'Kyel Bailey, 111 Israel Road S.E., Tumwater, WA 98501, 360-764-9161; Implementation and Enforcement: Lonnie Peterson, 111 Israel Road S.E., Tumwater, WA 98501, 360-819-7397.

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 Me'Kyel Bailey, P.O. Box 47830, Olympia, WA 98504-7830, phone 360-764-9161, TTY 711, email mekyel.bailey@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 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: RCW 34.05.310 (4) (c) applies to portions of WAC 246-350-020; RCW 3[4].05.310 (4) (d) applies to all of WAC 246-350-001, WAC 246-350-010 and portions of WAC 246-350-020; RCW 34.05.310 (4) (e) applies to portions of WAC 246-350-020; and RCW 34.05.310 (4) (g) applies to all of WAC 246-350-030.

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)

The proposed rules establish standards for designation of crisis centers as designated 988 contact hubs.

SBEIS Table 1 below identifies and summarizes 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	Cost Threshold
624190	Other Individual and Family Services	2,952	\$7,219.80

While WAC 246-350-001, 246-350-010, and 246-350-030 are exempt as identified above, portions of the proposed requirements in WAC 246-350-020 include probable costs that businesses in the industry must comply with to comply with the proposed rule.

The following is an analysis of the probable costs to comply the proposed rules in WAC 246-350-020.

Description: Subsection (6) requires employment of sufficient staff to respond to 90 percent of initial incoming contacts within 30 seconds without placing those contacts on hold. This requirement is lower than the federal recommendations, expressed as follows:

Applicable to 988 crisis contact centers: Lifeline centers should work to achieve and maintain at least the following monthly target key performance indicators for all services the center provides for 988:

- *Ninety-five percent of 988 lifeline contacts answered are answered within 20 seconds or less;*
- *Ninety percent of contacts answered are answered within 15 seconds or less;*
- *Less than 5 percent of contacts abandoned; and*
- *Less than 10 percent of contacts rolling over to the national backup system.*

The department developed the 90 percent/30 seconds requirement based on generally recognized best practices available at the time the rule was drafted and informed by feedback regarding feasibility from crisis centers. Substance Abuse and Mental Health Services Administration's (SAMHSA) 988 quality and services plan, which contains the recommendations immediately above, was released many months after the rule had been drafted. While the department recognizes the importance of the federal aspirations, it opted not to change the rule because the federal guidelines in this instance are recommendations rather than requirements.

Cost(s): Indeterminate due to the variability of call volume.

Description: Subsection (7) requires designated 988 contact hub staff to be provided with initial and ongoing trauma-informed training in skills including, but not limited to, best practices in risk assessment; effective triage to system partners when additional clinical intervention is needed; cultural humility; providing developmentally appropriate, culturally appropriate services to support members of communities at higher risk for suicide, including members of the agricultural community; crisis deescalation; information security; and collecting basic safety information.

These training requirements were designed to incorporate interested party feedback on the training desired and help 988 contact hubs to comply with contractual requirements established in RCW 71.24.890 (4)(b)(iii)-(iv). The department declined to specify required hours or provenance of trainings because training requirements are specified in the network agreements that centers must enter into to become 988 lifeline centers. The network administrator (Vibrant Emotional Health (Vibrant)) requires completion of three Vibrant-developed core self-paced online trainings for crisis counselors. Vibrant also provides guidance on training during the clinical review phase of the application process for joining the 988 network. Because the network agreements are subject to change at Vibrant's discretion, the department sought in this subsection to bring together the various subject matter training requirements while retaining the flexibility to accommodate changes in the network agreement by setting specific training standards in its contracts with 988 contact hubs rather than in rules.

The department included the term "trauma informed" to clarify the kind of training approach that is recognized as a best practice for providing empathy to callers in acute distress. The requirement of a self-care component to address secondary trauma was added at the request of crisis contact centers.

The initial and ongoing trauma-informed training as required in the proposed rule is exempt pursuant to RCW 34.05.310 (4)(d) as it clarifies the requirements in statute without changing its effect.

The proposed rule also requires training to include a self-care component designed to address secondary trauma. This is an added training.

Cost(s): There are no probable costs. Training on self-care for secondary trauma is available online without charge, though 988 contact hubs would be permitted to use other sources if desired.

Description: Subsection (15) requires messaging about the 988 and the suicide and crisis lifeline is consistent with messaging released by the authority, the department, the National 988 Administrator, SAMHSA, and the veterans crisis line networks.

RCW 71.24.890 (4)(b)(vi) requires 988 contact hubs to collaborate with the authority, the veterans crisis line, and the "national suicide prevention lifeline." The proposed rule clarifies what is meant by collaborating with the lifeline, a term that refers to the 988 network of call centers rather than an entity that can be collaborated with. Messaging about the lifeline is conducted by SAMHSA and the National Administrator; to avoid confusion, the proposed rule identifies those entities in the rule. This portion of the proposed rule is exempt pursuant to RCW 34.05.310 (4)(d) as the proposed rule clarifies the statutory requirement without changing its effect.

The requirement for consistent messaging released by the department is not exempt from analysis.

Cost(s): There are no probable costs for 988 contact hubs to provide consistent messages with the department, as the department's messaging is required to be consistent with that of the national suicide prevention lifeline and the veterans crisis line, with which 988 contact hubs are statutorily required to ensure consistency of messaging.

Why the proposed rule may impose more-than-minor costs for businesses in the industry.

Based on the analysis of the proposed rule and because of the of indeterminate cost assumptions the department assumes that the proposed rule may impose more-than-minor costs, calculated to be \$7,219.80, for businesses in the industry. Because of the variability of call volume, the department is unable to determine specific costs.

Based on the indeterminate cost assumptions the department has determined that the 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.

The department is unable to mitigate costs because it must establish the same standard for all 988 contact hubs regardless of size because timely access to resources is important.

The department held four listening sessions (two for tribes and two for the community in which businesses of all sizes were invited) in spring 2023 prior to drafting the rule and four workshops (two for tribes and two for the community again in which businesses of all sizes were invited) in autumn 2023 to gather feedback on the draft rule. The department also circulated the rule for review and feedback among the Tribal 988 Subcommittee of the Crisis Response Improvement Strategy Committee, the three existing 988 suicide and crisis lifeline centers in the state, and behavioral health administrative services organizations in spring 2024.

The department is unable to determine the variability of call volume and therefore is unable to determine what if any additional staff will need to be hired.

A copy of the statement may be obtained by contacting Me'Kyel Bailey, P.O. Box 47830, Olympia, WA 98504-7830, phone 360-764-9161, TTY 711, email mekyel.bailey@doh.wa.gov.

September 27, 2024
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5558.1

Chapter 246-350 WAC
STANDARDS FOR DESIGNATION OF 988 CONTACT HUBS

NEW SECTION

WAC 246-350-001 Purpose. The purpose of this rule is to establish consistent standards and a process for the department to designate crisis centers as 988 contact hubs. To qualify for designation as a 988 contact hub, a crisis center must comply with this chapter and any other state or federal requirements.

NEW SECTION

WAC 246-350-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "988 contact hub" means a state-designated contact center that streamlines clinical interventions and access to resources for people experiencing a behavioral health crisis, participates in the 988 Suicide and Crisis Lifeline network to respond to statewide or regional 988 contacts, and meets the requirements of RCW 71.24.890.

(2) "988 Suicide and Crisis Lifeline" means the national network of local crisis centers, reachable by dialing or texting "988," providing free and confidential emotional support to people in crisis or emotional distress 24 hours a day, seven days a week.

(3) "Authority" means the Washington state health care authority.

(4) "Behavioral health services" means either mental health services as described in chapters 71.24 and 71.36 RCW, substance use disorder treatment services as described in chapter 71.24 RCW, or both, which, depending on the type of service, are provided by licensed or certified behavioral health agencies, or behavioral health providers, or are integrated into services offered by other health care providers.

(5) "Care coordination" means the coordination of an individual's health care needs with the assistance of a primary point of contact.

(6) "Certified peer counselor" means a person who has met the requirements of WAC 182-115-0200 and has been recognized by the Washington state health care authority as a certified peer counselor.

(7) "Community-based crisis team" means a team that is part of an emergency medical services agency, a fire service agency, a public health agency, a medical facility, a nonprofit crisis response provider, or a city or county government entity other than a law enforcement agency, that provides the on-site community-based interventions of a mobile rapid response crisis team for individuals who are experiencing a behavioral health crisis.

(8) "Crisis center" means a resource for people in behavioral health crisis that responds to crisis contacts via phone, text, or chat capabilities.

(9) "Culturally appropriate services" means effective, equitable, understandable, respectful, western and indigenous quality care and treatment services that are responsive to a community's cultural health beliefs, practices, and preferences.

(10) "Cultural humility" means the ability to remain open to another person's identity, including their cultural background, beliefs, values, and traditions, and its effects on behavioral health care decision-making.

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

(12) "Help seeker" means an individual in crisis, as defined by that individual, who contacts 988 via any of the available modalities.

(13) "Indian health care provider" means a health care program operated by the Indian health service or by an Indian tribe, tribal organization, or urban Indian organization as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. § 1603).

(14) "Mobile rapid response crisis team (MRRCT)" means a team that provides professional on-site community-based intervention such as outreach, de-escalation, stabilization, resource connection, and follow-up support for individuals who are experiencing a behavioral health crisis, that shall include certified peer counselors as a best practice to the extent practicable based on workforce availability, and that meets standards for response times established by the authority.

(15) "Mobile response and stabilization services (MRSS) teams" are mobile rapid response crisis teams that provide developmentally appropriate crisis intervention and a separate but connected in-home stabilization phase for youth and families.

(16) "Primary point of contact" means the person who provides information to the individual and their caregivers and works with the individual to ensure they receive the most appropriate treatment without duplication of care.

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

(18) "Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

NEW SECTION**WAC 246-350-020 Standards for designation as a 988 contact hub.**

A crisis center must meet the requirements of this section in order to be designated as a 988 contact hub. At a minimum, a crisis center must:

- (1) Obtain and maintain an active agreement with the administrator of the 988 Suicide and Crisis Lifeline and remain in substantial compliance with that agreement to the satisfaction of the administrator.
- (2) Participate in the 988 Suicide and Crisis Lifeline network.
- (3) Adopt and use a technology platform approved by the department and maintain the necessary infrastructure, including equipment and software, maintenance, upgrades, and technical support, to operate all required 988 services and respond to help seekers via phone calls, text, chat, and other similar methods of communication that may be developed in the future.
- (4) Ensure interpretation services are available in the help seeker's preferred language.
- (5) Ensure services are accessible to those who are deaf or hard of hearing.
- (6) Employ sufficient staff to respond to 90 percent of initial incoming contacts within 30 seconds without placing those contacts on hold.
- (7) Provide designated 988 contact hub staff with initial and on-going trauma-informed training in skills including, but not limited to, best practices in risk assessment; effective triage to system partners when additional clinical intervention is needed; cultural humility; providing developmentally appropriate, culturally appropriate services to support members of communities at higher risk for suicide, including members of the agricultural community; crisis de-escalation; information security; and collecting basic safety information. Training shall also include a self-care component designed to address secondary trauma.
- (8) Provide crisis line counseling, intervention services, triage, care coordination, referrals, and connections to incoming contacts from any jurisdiction within Washington 24 hours a day, seven days a week, every day of the year.
- (9) Provide referrals in the help seeker's geographical region to developmentally and needs-appropriate services including, but not limited to:
 - (a) Emergency medical care;
 - (b) Behavioral health crisis services;
 - (c) Tribal behavioral health services and, where needed, tribal first responders.
- (10) Coordinate with certified peer counselors as available to respond to follow-up calls with the help seeker's consent.
- (11) Maintain sufficient resources to provide follow-up communications with help seekers as appropriate.
- (12) Provide services to help seekers regardless of the ability or willingness of the help seeker to disclose all information requested by crisis center staff and regardless of whether the help seeker is communicating through a third party.
- (13) Collect and maintain current information on local resources that could be used as alternate interventions to 911, and ensure that staff are guided on how to access such services so that emergency services (911, police, sheriff) are contacted for assistance only in

cases where risk of harm to self or others is imminent or in progress, and when a less invasive plan for the help seeker's safety cannot be collaborated on with the individual.

(14) Adopt and implement policies and procedures for connecting self-identified tribal members in crisis to appropriate tribal services when the help seeker wishes to use tribal services; follow the tribe's established tribal crisis coordination protocols; and coordinate responses whenever possible with tribes, including tribal behavioral health agencies, Indian health care providers, and, where necessary, tribal police.

(15) Ensure messaging about the 988 and the Suicide and Crisis Lifeline is consistent with messaging released by the authority, the department, the National 988 Administrator, the Substance Abuse and Mental Health Services Administration, and the Veterans Crisis Line networks.

(16) Comply with all reporting requirements established by the department.

(17) Enter into and comply with an agreement with the department.

NEW SECTION

WAC 246-350-030 Designation process. (1) The department may issue a 988 contact hub designation to a crisis center that demonstrates to the satisfaction of the department that it meets the standards under this chapter.

(2) To apply for designation, a crisis center shall submit to the department an application on forms provided by the department.

(3) To recommend a crisis center for designation as a 988 contact hub, behavioral health administrative services organizations shall comply with the recommendation process established by the department.

(4) 988 contact hub designations are valid for five years and may be renewed by the department upon application by the crisis center to the department.

(5) The department may deny, suspend, or revoke the designation of any 988 contact hub at any time for failure to meet minimum standards under this chapter or for failure to substantially comply with the contract specified in subsection (6) of this section.

(a) If an application is suspended, revoked, or denied, the department shall provide the designated 988 contact hub or hub applicant a letter of denial, suspension, or revocation, including a statement of the reasons for the action. Letters of suspension and revocation shall be effective 28 days after the designated 988 contact hub receives the notice.

(b) A designated 988 contact hub or hub applicant that is aggrieved by the decision to suspend, revoke, or deny designation has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application for adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, and be served on or received by the department within 28 days of the effective date of the decision.

(6) Upon designation, a 988 contact hub shall enter into a contract and data sharing agreement with the department.

WSR 24-20-110
PROPOSED RULES
NOXIOUS WEED
CONTROL BOARD

[Filed October 1, 2024, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-059.

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties. The Washington state noxious weed control board (WSNWCB) is proposing to amend pronouns and the state noxious weed list for 2025.

Hearing Location(s): On November 5, 2024, at 1:00 p.m., at the Confluence Technology Center, 285 Technology Center Way, Wenatchee, WA 98801; or via WebEx <https://agr.webex.com/agr/j.php?MTID=m4bd1e6b457812c16d55463abb11d32b0>, phone 877-312-2253, Meeting 2538 353 9546.

Date of Intended Adoption: November 6, 2024.

Submit Written Comments to: Mary Fee, WSNWCB, P.O. Box 42560, Olympia, WA 98504-2560, email mfee@agr.wa.gov or noxiousweeds@agr.wa.gov, fax 360-902-2053, beginning October 1, 2024, by Monday, November 4, 2024.

Assistance for Persons with Disabilities: Contact Mary Fee, phone 360-561-4428, fax 360-302-2053, TTY 800-833-6388, email mfee@agr.wa.gov, by Wednesday October 30th.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state noxious weed list provides the basis for noxious weed control efforts for county noxious weed control boards and other entities. It also provides guidelines for the state noxious weed control board. This proposal updates the noxious weed list, updates pronouns, and updates language throughout chapter 16-750 WAC. The anticipated effects include having an effective and efficient noxious weed list and guidelines for the administration of WSNWCB.

Updates to the noxious weed list:

WAC 16-750-005 Class A Noxious Weed Changes and Additions: The addition of round leaf bittersweet, *Celastrus orbiculatus* and the addition of marsh thistle, *Cirsium palustre*.

WAC 16-750-011 Class B Noxious Weed Changes and Additions: Undesignating shiny geranium, *Geranium lucidum*, in Pierce County.

WAC 16-750-015 Class C Noxious Weed Changes and Additions: Adding wild holly, *Ilex species*, not including holly found in managed landscapes, or where commercially or agriculturally grown.

Updating Pronouns Throughout: WAC 16-750-120 (8)(11), 16-750-130 (2)(b), 16-750-135 (11) and (15)(c), and 16-750-137(5).

Other administrative updates to ensure the chapter 16-750 WAC reflects and matches chapter 17.10 RCW, and other grammatical corrections.

Reasons Supporting Proposal: Under RCW 17.10.080, WSNWCB is charged with updating the state noxious weed list on an annual basis to ensure it accurately reflects the noxious weed control priorities and noxious weed distribution. Under RCW 17.10.070, WSNWCB is charged with adopting, amending, or repealing rules, pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

The proposed addition of round leaf bittersweet, *Celastrus orbiculatus*, and marsh thistle, *Cirsium palustre* as class A noxious weeds

is intended to keep them from spreading from their very limited distribution to new locations within Washington state. Noxious weeds are very invasive species that when left uncontrolled outcompete agricultural crops and native species. Noxious weed infestations negatively impact both terrestrial and aquatic habits [habitats] as well as farming and grazing lands.

The designation change of shiny geranium from a class B noxious weed designated by the state for control to undesignated in Pierce County better meets the current distribution and control requirements in Pierce County. Class B noxious weeds are generally designated where they are absent, limited, or pose a serious threat to health, agriculture, or natural areas so the economic impact is not unreasonable.

The proposed addition of nonnative holly, *Ilex species* as a C noxious weed species is intended to help control nonnative holly in wilderness, ecosystems, and habitats and to limit its distribution to uninfested areas as well as allow for funding and permitting of control work.

Amending he/she pronouns to they/their pronouns helps to clarify current rule language using modern grammatically correct pronouns and to clarify current rule language using inclusive pronouns.

Statutory Authority for Adoption: RCW 17.10.070, 17.10.080.

Statute Being Implemented: Chapter 17.10 RCW.

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

Name of Proponent: WSNWCB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mary Fee, 1111 Washington Street S.E., Olympia, WA 98504, 360-561-4428.

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. WSNWCB is not one of the agencies listed in this section.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

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

Small Business Economic Impact Statement (SBEIS)

Chapter 16-750 WAC

State Noxious Weed List and Schedule of Monetary Penalties

A Rule Concerning 2025 Noxious Weed List and Updates

September 30, 2024

SECTION 1: Describe the proposed rule: Chapter 17.24 RCW mandates "a strong system" to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and infestations. WSNWCB is charged with updating the state noxious weed list annually per RCW 17.10.080. Noxious weeds and invasive species adversely affect Washington's agriculture, natural and human resources,

and wildlife habitats, both terrestrial and aquatic. Eradication and control of noxious and invasive weed species limits economic loss and minimizes negative impacts to both businesses and the landscape protecting the forest, agricultural, horticultural, floricultural, and apiary industries of the state from noxious and invasive weed invasions.

The Washington state noxious weed list provides the basis for noxious weed control efforts for county noxious weed control boards and other entities. It also provides guidelines for the state noxious weed control board. This proposal makes a few amendments to WAC 16-750-005, 16-750-011, and 16-750-015. Specifically, WSNWCB is proposing:

1. WAC 16-750-005 Class A Noxious Weed Additions: The addition of round leaf bittersweet, *Celastrus orbiculatus* and the addition of marsh thistle, *Cirsium palustre*.

2. WAC 16-750-011 Class B Noxious Weed Changes: Undesignating shiny geranium, *Geranium lucidum*, in Pierce County.

3. WAC 16-750-015 Class C Noxious Weed Additions: Wild holly, *Ilex species*, not including holly found in managed landscapes or where commercially or agriculturally grown.

Proposed additions of Class A noxious weeds: The proposed addition of round leaf bittersweet, *Celastrus orbiculatus*, and marsh thistle, *Cirsium palustre* as Class A noxious weeds is intended to keep them from spreading from their very limited distribution to new locations within Washington state. Noxious weeds are very invasive species that when left uncontrolled outcompete agricultural crops and native species. Noxious weed infestations negatively impact both terrestrial and aquatic habits [habitats] as well as farming and grazing lands.

Round leaf bittersweet is proposed for listing as a class A noxious weed because it climbs and dominates canopies and it chokes and shades out lower plants. Additionally, birds readily spread seeds. The intent is to prevent round leaf bittersweet from establishing in Washington.

Marsh thistle, *Cirsium palustre*, is recommended for listing as a class A noxious weed because it invades riparian areas, wetlands, woodlands, and pastures. It forms monocultures and hybridizes with creeping thistle, *Cirsium arvense*. There are no or very limited infestations in Washington. The intent is to prevent marsh thistle from establishing in Washington.

Proposed designation changes: Shiny geranium: The designation change of shiny geranium to be undesignated in Pierce County is intended to better match the distribution. Shiny geranium is a small annual plant that produces a large amount of seed in a single season. Shiny geranium can outcompete native vegetation and is found in many different areas.

Proposed additions of class C noxious weeds: Wild holly, *Ilex species*, is a slow-growing evergreen shrub or tree. Birds spread the berries, which has allowed holly to become established in natural areas, such as native lowland forest. New scientific data indicate that in forests, holly can form dense thickets that can suppress native shrubs and young trees. Holly also reproduces by producing suckers, and branches can root where they touch the ground. Holly is tolerant of a wide range of soil, moisture, and light conditions, allowing it to invade a variety of sites. All parts of the plant can be toxic to humans, if ingested in large quantities. Berries are the most likely part to be eaten and can cause gastrointestinal problems in children who have eaten as few as three berries.

A brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need to comply with the proposed rule: If a business owns land that contains newly listed class A noxious weeds, it will be required to control that infestation. Both the proposed class A additions, round leaf bittersweet and marsh thistle, are in very limited distribution if at all in Washington state. The proposed addition of these two species is intended to protect Washington's agricultural lands, wilderness, and ecosystems from future infestations. This listing allows for early detection and rapid response if plants are found. Many county noxious weed control boards have programs to assist landowners with class A infestation eradication and control.

The designation change of shiny geranium is less restrictive and will have less compliance requirements. Counties may still select this for control at the local level.

This rule making may affect any businesses that own land infested with wild holly. The listing of wild holly means that county noxious weed boards have the option to subsequently select wild holly for mandatory control. The noxious weed list is separate from the Washington state department of agriculture (WSDA) quarantine lists (chapter 16-752 WAC), which prohibit the sale and transport of particular species, so the proposed listing of wild holly would not prohibit the production or sale of English holly grown for foliage or for horticultural use. A class C listing of wild holly does not itself require control by landowners. County noxious weed control boards would have the option of selecting it for mandatory control, although holly that is grown commercially or agriculturally would be excluded from this requirement. The vast majority of county noxious weed control boards polled indicated either an interest in educating the public or taking no regulatory action at all about wild holly. Therefore, there are no compliance requirements for this proposed listing.

SECTION 2: Identify which businesses must comply with the proposed rule using the North American Industry Classification System (NAICS) codes and the minor cost thresholds: The businesses listed in this table may have the potential to grow and/or sell the proposed species to be added to the noxious weed list. However, commercially or agriculturally grown holly is excluded.

NAICS Code (4, 5, or 6 Digits)	NAICS Business Industry Description	Number of Impacted Businesses That Operate in Washington State (if known)	Minor Cost Threshold = .3% of Average Annual Receipts	\$100 (This can be the default minor-cost used if data is unavailable)	Minor Cost Threshold = This Column Calculates Automatically. (0.01* AvgPay)	Cost of Business That is Less Than \$50 of Annual Cost Per Client or Other Appropriate Units of Service. DSHS rules only
111000	Other Crop Production	Unknown	Unknown	\$100	Unknown	Unknown
113000	Other forestry and logging	Unknown	Unknown	\$100	Unknown	Unknown
110000	Other Agriculture, forestry, fishing, and hunting	Unknown	Unknown	\$100	Unknown	Unknown
444220	Nursery, Garden Center, and Farm Supply Stores	Unknown	\$3612.25 Dataset pulled from ESD	\$100	\$4675.20 2021 Dataset pulled from ESD	Unknown
111421	Nursery and Tree Production	Unknown	\$2588.86 Dataset pulled from ESD	\$100	\$5322.57 2021 Dataset pulled from ESD	Unknown
115310	Support Activities for Forestry	Unknown	\$3238.51 2021 Dataset pulled from ESD	\$100	\$3893.89 2021 Dataset pulled from ESD	Unknown

NAICS Code (4, 5, or 6 Digits)	NAICS Business Industry Description	Number of Impacted Businesses That Operate in Washington State (if known)	Minor Cost Threshold = .3% of Average Annual Receipts	\$100 (This can be the default minor-cost used if data is unavailable)	Minor Cost Threshold = This Column Calculates Automatically. (0.01* AvgPay)	Cost of Business That is Less Than \$50 of Annual Cost Per Client or Other Appropriate Units of Service. DSHS rules only
444240	Nursery and Garden Centers	Unknown	Unknown	\$100	Unknown	Unknown
424930	Nursery Stock merchant Wholesalers	Unknown	\$8109.70 2021 Dataset pulled from ESD	\$100	\$4086.45 2021 Dataset pulled from ESD	Unknown

Additionally, any business that owns lands with an infestation of any of the proposed species to be added to the 2025 noxious weed list must comply with the proposed rule.

SECTION 3: Analyze the probable cost of compliance: There will be no increase in licensing, inspections, or other fees for the proposed listings. If a business owns land that contains newly listed class A noxious weeds, it may control the plant itself. Such a business would incur minor costs associated with control efforts, i.e. a shovel, possible herbicide, and/or herbicide sprayer which would total less than \$100. Over-the-counter herbicides are readily available, relatively inexpensive, and will control most noxious weed species. Most land-owning businesses have established vegetation management or landscaping plans and practices. The additional costs for staff hours for weed control related to the proposed changes to the noxious weed list are expected to be minor. There are over-the-counter herbicides available for noxious weed control. However, if a business chooses to use an optional regulated herbicide, then they will be required to retain an application record consistent with laws governing use of such regulated herbicides. The application record is the responsibility of the person applying the herbicide. While some land-owning businesses may choose to engage in professional services to control newly added/designated noxious weeds, it is expectation that businesses will choose the more cost-effective option of controlling the weeds themselves. Additionally, many county noxious weed control boards have programs to assist landowners with class A infestation eradication and control.

Because so many noxious weeds are former or present ornamental species, the horticultural industry has the potential to be impacted by additions of new noxious weed species, as their noxious weed status could reduce demand by consumers. However, it is unlikely that these changes will directly cause these businesses to lose sales, revenue, or jobs. Neither of the proposed class A species are sold ornamentally and wild holly includes an exclusion for holly found in managed landscapes, or where commercially or agriculturally grown. The noxious weed list is separate from the WSDA quarantine list (chapter 16-752 WAC), which prohibits the sale and transport of particular species; thus, these potential noxious weed changes would not directly prohibit the sales of these plants. To help assess whether there could be an indirect economic impact to nurseries and businesses, WSNWCB developed a survey through SurveyMonkey (<https://www.surveymonkey.com/r/JBX9N3H>). A summary of the proposed changes to the 2025 noxious weed list, along with a link to the online survey, was emailed on August 26, 2024, to approximately 4800 nurseries that had provided emails when applying for their WSDA nursery licenses. Additionally, the survey was forwarded to Washington State Nursery and Landscape Associations channels, the Northwest Holly Growers Association, Friends of

Farms and Forest, the Cattlemen's Association, and several other email lists. We received a total of 39 electronic responses from nurseries and businesses.

Survey Results:

Proposed addition of round leaf bittersweet, Celastrus orbiculatus, as a class A species: A total of 38 (100 percent) nurseries or businesses that answered this question indicated that they do not stock *Celastrus orbiculatus* as part of their inventory or have it on their land, zero (zero percent) indicated that they did have round leaf bittersweet as part of their inventory or on their land, and zero were not sure. Of the nurseries or businesses that answered this question, six total nurseries or businesses answered the follow-up question pertaining to any resulting economic loss, either due to a reduction in revenue or lost jobs. A total of six (100 percent) nurseries or businesses indicated that this class A addition would not cost their businesses in lost revenue or lost jobs, zero (zero percent) were not sure, and zero (zero percent) indicated that it would. Businesses were also asked if they sell one or more comparable species. A total of seven nurseries or businesses responded, with seven stating no, zero stating yes, and zero that were unsure.

Proposed addition of marsh thistle, Cirsium palustre, as a class A species: A total of 35 (94.59 percent) nurseries or businesses that answered this question indicated that they do not stock *Cirsium palustre* as part of their inventory or have it on their land, one (2.7 percent) indicated that they did have marsh thistle as part of their inventory or on their land, and one (2.7 percent) was not sure. Of the nurseries or businesses that answered this question, six total nurseries or businesses answered the follow-up question pertaining to any resulting economic loss, either due to a reduction in revenue or lost jobs. A total of six (100 percent) nurseries or businesses indicated that this class A addition would not cost their businesses in lost revenue or lost jobs, zero (zero percent) were not sure, and zero (zero percent) indicated that it would. Businesses were also asked if they sell one or more comparable species. A total of seven nurseries or businesses responded, with seven stating no, zero stating yes, and zero that were unsure.

Proposed addition of wild holly, Illex species, as a class C species: A total of 25 (65.79 percent) nurseries or businesses that answered this question indicated that they do not stock *Illex species* as part of their inventory or have it on their land, 13 (34.21 percent) indicated that they did have holly as part of their inventory or on their land, and zero were not sure. Of the nurseries or businesses that answered this question, 18 total nurseries or businesses answered the follow-up question pertaining to any resulting economic loss, either due to a reduction in revenue or lost jobs. A total of 13 (72.22 percent) nurseries or businesses indicated that this class C addition would not cost their businesses in lost revenue or lost jobs, one (5.56 percent) was not sure, and four (22.2 percent) indicated that it would. Of the four, holly growers indicated an indirect negative impact to their businesses and loss of jobs due to the negative perception of holly species as a noxious weed. This ruling would not restrict the sales or exportation of holly. One holly grower indicated an indirect cost for marketing to respond to and counteract the perception of holly as a noxious weed, undesirable, and harmful. The estimated cost of loss of sales due to this perception for this holly grower is 20 percent, plus \$66,000 annually for marketing. Another response indicated a different loss per year for the concerns regarding

the perception of holly if listed, estimated at around 30 percent loss in sales or \$2,100 with the anticipation that each year, sales will decline. One out-of-state holly grower responded from Oregon indicating an indirect loss of \$100,000 and 10 jobs. Additionally, one respondent noted a loss of \$3,000 but did not indicate the reason. Businesses were also asked if they sell one or more comparable species. A total of 17 nurseries or businesses responded, with 10 stating no, six stating yes, and one that was unsure. One respondent noted the negative economic impact of controlling holly infestations if not listed.

Shiny geranium, *Geranium lucidum*: Undesignate in King County: A total of 31 (91.18 percent) nurseries or businesses indicated that the undesignation of common shiny geranium in Pierce County would not cost their businesses in lost revenue or lost jobs, two (5.88 percent) were not sure, and one (2.97 percent) answered yes.

SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry: The class A proposed addition round leaf bittersweet is not being sold. One business indicated selling the class A proposed addition marsh thistle but did not indicate that the proposal would result in or impose more-than-minor costs. Both the proposed class A additions, round leaf bittersweet and marsh thistle, are in very limited distribution if at all in Washington state. The proposed addition of these two species is intended to protect Washington's agricultural lands, wilderness, and ecosystems from future infestations. This listing allows for early detection and rapid response if plants are found. Many county noxious weed control boards have programs to assist landowners with class A infestation eradication and control. Therefore, there would be little to no minor costs associated with any infestations of these two species.

Wild holly is being proposed as an addition to the class C noxious weed species list. Class C noxious weed species are not designated for control at the state level. The intent in adding wild holly to the class C noxious weed list is to educate and provide outreach on the concern of the threat to native habitats, forests, and agriculture. This may also give individuals and agencies the ability to get and provide funding for on-the-ground control work. The listing's exclusion for commercially or agriculturally grown holly and differentiation between wild holly and English (Christmas) holly is intended to protect holly growers from negative impacts of this listing. There is no regulatory compliance associated with the listing of wild holly. However, potentially commercial holly sales may be indirectly impacted. The Northwest Holly Growers Association has concerns that listing wild holly as a class C noxious weed will give the perception that holly is a "bad plant" which in turn may reduce their sales of English holly used in Christmas wreaths and ornaments. The Northwest Holly Growers Association and members have self-reported costs associated with the proposed wild holly listing. These costs include loss of sales and \$66,000 for marketing to counteract the perception of holly as a noxious weed, undesirable, and harmful. Based on the potential for indirect reputational effects that decrease demand for commercial holly, this SBEIS assumes that the proposed rule may impose more-than-minor costs on commercial growers of holly.

The designation change of shiny geranium should have no effect, as this change is less restrictive. Class B noxious weeds are generally designated where they are absent, limited, or pose a serious threat to health, agriculture, or natural areas so the economic impact is not unreasonable. Limited distribution is typically defined as less than 100 infested acres within a county. These infested acres are typically

divided amongst many landowners including private, public, and business. Noxious weed infestations are commonly found in disturbed soils, open areas, and along vectors of spread such as trails and rivers. The changes in designation will not cause businesses to incur more-than-minor costs to control.

SECTION 5: Determine whether 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. Also, consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue: Overall, there is insufficient data to calculate the disproportionate impacts to small businesses. Thus, for purposes of this SBEIS, we assume there will be disproportionate impacts. However, excluding the possibility that landowners may incur compliance costs related to the two class A listings, the proposed rule changes will not result in any costs to comply.

SECTION 6: If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the impacts cannot be reduced, provide a clear explanation of why. Under RCW 19.85.030(2), each agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

To mitigate the perceived cost to holly growers from the proposed wild holly listing, this rule proposal would only add "wild holly" which would be listed as "*Ilex species*, not including holly found in managed landscapes, or where commercially or agriculturally grown."

Additionally, WSNWCB's education committee has discussed including statements in specific brochures and educational materials that will provide information regarding the exclusion for English and/or Christmas holly and focus on holly that is found in unmanaged forests, wildlands, and landscapes.

Subsection	Method	Agency response
(a)	Reducing, modifying, or eliminating substantive regulatory requirements	Excluded holly found in managed landscapes, or where commercially or agriculturally grown. Any additional reduction, modification, or elimination of the regulatory requirements of the proposed rules could increase the risks of spread of noxious weeds.
(b)	Simplifying, reducing, or eliminating recordkeeping and reporting requirements	The class A listings may have implications for recordkeeping, however the proposed rule itself does not have any recordkeeping or reporting requirements.
(c)	Reducing the frequency of inspections	The rule does not contain mandate any regulatory inspections.
(d)	Delaying compliance timetables	Delaying compliance timetables is not a viable mitigation measure. A delay in listings will result in a higher risk of spread for the noxious weeds considered.
(e)	Reducing or modifying fine schedules for noncompliance; or	The rule does not contain any fines for noncompliance.
(f)	Any other mitigation techniques, including those suggested by small businesses or small business advocates	Education and outreach about the difference between wild holly and Christmas or English holly sold commercially.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule. Stakeholder contact events:

Date(s)	Activity How were small businesses notified and involved in the development of the proposed rule? (News release, public meeting, survey etc.)
May 6, 2024 June 12, 2024 July 10, 2024 August 8, 2024	Noxious weed committee meetings (a member of the noxious weed committee, Ken Bajema, is also a member of the Northwest Holly Growers Association).
August 26, 2024	Survey sent out to nurseries, holly growers, and others to gather information about economic impacts.
September 19, 2024	WSNWCB regular September meeting, received and reviewed written comments pertaining to proposed changes before voting to move proposals forward to the open public hearing in November.

At the August 8th noxious weed committee meeting, the committee agreed to include the Northwest Holly Growers' recommendation of definition of wild holly to include the genus rather than species to help reduce the impact on Christmas or English holly individually.

WSNWCB has taken into consideration letters from individual holly growers as well as the Northwest Holly Growers Association pertaining to the perceived cost and impacts to commercial holly businesses and their recommendations for the proposed rule wording. WSNWCB will consider written and verbal testimony at the November 5th open public hearing regarding the 2025 proposed noxious weed list changes.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: One out-of-state grower suggested 10 jobs will be lost due to the perception of holly as harmful or undesirable. However, it is estimated that no jobs will be lost due to compliance requirements of the proposed rule. There is no state-mandated regulatory compliance for the proposed listing of wild holly.

SECTION 9: Summarize the results of the analysis, including the determination if costs are disproportionate: Few, if any, small businesses will be directly impacted by these proposed changes to the 2025 noxious weed list.

The additions of round leaf bittersweet and marsh thistle as class A noxious weeds will help to protect Washington's ecosystems, habitats, and agriculture from these very invasive species. The designation of shiny geranium will better match the distributions of shiny geranium in Pierce County. This will allow for education and control work when needed. The proposed addition of wild holly, *Ilex* species, as a class C noxious weed species is intended to keep it from spreading from current wild infestations to new locations within Washington state and allow for funding and permitting. Wild holly is known to invade riparian and sensitive areas, as well as grow in forested understories. Noxious weeds are very invasive species that when left uncontrolled, outcompete agricultural crops and native species. Noxious weed infestations negatively impact both terrestrial and aquatic habits [habitats] as well as farming and grazing lands.

The class A proposed addition round leaf bittersweet is not being sold. One business indicated having the class A proposed addition marsh thistle in their inventory or on their land but did not indicate a loss in sales or jobs. Holly growers anticipate an indirect negative economic impact to English holly sales due to the perception of English holly as an undesirable plant if listed. There is no cost to comply with the proposed addition of wild holly as a class C noxious weed. WSNWCB has taken measures to help mitigate indirect costs to holly growers associated with this listing.

The undesignation of shiny geranium in Pierce County is less restrictive and will have no bearing on sales or job loss.

A copy of the statement may be obtained by contacting Mary Fee, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-561-4428, fax 360-902-2094, TTY 800-833-6388, email mfee@agr.wa.gov.

September 30, 2024
Mary Fee
Executive Secretary

OTS-5884.2

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name	Scientific Name
broom, French	<i>Genista monspessulana</i>
broom, Spanish	<i>Spartium junceum</i>
common crupina	<i>Crupina vulgaris</i>
cordgrass, common	<i>Spartina anglica</i>
cordgrass, dense-flowered	<i>Spartina densiflora</i>
cordgrass, salt meadow	<i>Spartina patens</i>
cordgrass, smooth	<i>Spartina alterniflora</i>
dyer's woad	<i>Isatis tinctoria</i>
eggleaf spurge	<i>Euphorbia oblongata</i>
false brome	<i>Brachypodium sylvaticum</i>
floating primrose-willow	<i>Ludwigia peploides</i>
flowering rush	<i>Butomus umbellatus</i>
garlic mustard	<i>Alliaria petiolata</i>
giant hogweed	<i>Heracleum mantegazzianum</i>
goatsrue	<i>Galega officinalis</i>
hydrilla	<i>Hydrilla verticillata</i>
Johnsongrass	<i>Sorghum halepense</i>
knapweed, bighead	<i>Centaurea macrocephala</i>
knapweed, Vochin	<i>Centaurea nigrescens</i>
kudzu	<i>Pueraria montana</i> var. <i>lobata</i>
meadow clary	<i>Salvia pratensis</i>
oriental clematis	<i>Clematis orientalis</i>
Palmer amaranth	<i>Amaranthus palmeri</i>
purple starthistle	<i>Centaurea calcitrapa</i>
reed sweetgrass	<i>Glyceria maxima</i>
ricefield bulrush	<i>Schoenoplectus mucronatus</i>
<u>round leaf bittersweet</u>	<u><i>Celastrus orbiculatus</i></u>
sage, clary	<i>Salvia sclarea</i>

Common Name	Scientific Name
sage, Mediterranean	<i>Salvia aethiopsis</i>
silverleaf nightshade	<i>Solanum elaeagnifolium</i>
small-flowered jewelweed	<i>Impatiens parviflora</i>
South American spongeplant	<i>Limnobiium laevigatum</i>
Syrian bean-caper	<i>Zygophyllum fabago</i>
Texas blueweed	<i>Helianthus ciliaris</i>
thistle, Italian	<i>Carduus pycnocephalus</i>
<u>thistle, marsh</u>	<u><i>Cirsium palustre</i></u>
thistle, milk	<i>Silybum marianum</i>
thistle, slenderflower	<i>Carduus tenuiflorus</i>
thistle, Turkish	<i>Carduus cinereus</i>
variable-leaf milfoil and hybrids	<i>Myriophyllum heterophyllum</i> <i>Myriophyllum heterophyllum x Myriophyllum hippuroides</i>
wild four o'clock	<i>Mirabilis nyctaginea</i>

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name	Will be a "Class B designate" in all lands lying within:
(1) blueweed, <i>Echium vulgare</i>	(a) regions 1, 2, 3, 4, 6 (b) region 5, except Spokane County
(2) Brazilian elodea, <i>Egeria densa</i>	(a) region 1, except Grays Harbor County (b) region 2, except Kitsap County and Green Lake in King County (c) King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River (d) region 3, except Wahkiakum County (e) regions 4, 5, and 6
(3) bugloss, annual, <i>Lycopsis arvensis</i>	(a) regions 1, 2, 3, 4, and 6 (b) region 5, except Spokane County
(4) bugloss, common, <i>Anchusa officinalis</i>	(a) regions 1, 2, 3, and 6 (b) All of region 4 except those areas lying within the Entiat River Valley between the Columbia River confluence and Stormy Creek in Chelan County (c) region 5, except Spokane County
(5) butterfly bush, <i>Buddleja davidii</i>	(a) Grays Harbor County of region 1 (b) San Juan County of region 2 (c) Cowlitz County of region 3
(6) camelthorn, <i>Alhagi maurorum</i>	(a) regions 1, 2, 3, 4, 5, and 6
(7) common fennel, <i>Foeniculum vulgare</i> (except bulbing fennel, <i>F. vulgare</i> var. <i>azoricum</i>)	(a) region 1, except Jefferson County (b) region 2, except King and Skagit counties (c) region 3, except Clark County

Name		Will be a "Class B designate" in all lands lying within:	
(8)	common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(d)	regions 4, 5, and 6
		(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Grant County
		(c)	Asotin, Columbia, and Garfield counties of region 6
(9)	common tansy, <i>Tanacetum vulgare</i>	(a)	Clallam County of region 1
		(b)	Kitsap and San Juan counties of region 2
		(c)	Cowlitz County of region 3
		(d)	Adams and Lincoln counties of region 5
(10)	Dalmatian toadflax, <i>Linaria dalmatica</i> ssp. <i>dalmatica</i>	(a)	regions 1, 2, and 3
		(b)	Adams, Kittitas, and Lincoln counties of region 5
		(c)	Benton, Franklin, and Walla Walla counties of region 6
(11)	Eurasian watermilfoil, <i>Myriophyllum spicatum</i>	(a)	region 1, except Pacific County
		(b)	Island, Kitsap, and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
		(e)	Adams, Kittitas, Lincoln, and Whitman counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
(12)	European coltsfoot, <i>Tussilago farfara</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(13)	fanwort, <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 4, 5, and 6
(14)	gorse, <i>Ulex europaeus</i>	(b)	region 3, except Cowlitz County
		(a)	region 1, except Grays Harbor and Pacific counties
(15)	grass-leaved arrowhead, <i>Sagittaria graminea</i>	(b)	regions 2, 3, 4, 5, 6
		(a)	region 1
		(b)	region 2, except Snohomish County
(16)	hairy willow-herb, <i>Epilobium hirsutum</i>	(c)	regions 3, 4, 5, and 6
		(a)	regions 1, 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
(17)	hanging sedge, <i>Carex pendula</i> , <i>Carex pendula</i> subsp. <i>pendula</i> and <i>Carex pendula</i> subsp. <i>agastachys</i>	(d)	region 6, except Benton and Franklin counties
		(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except for King County
(18)	hawkweed oxtongue, <i>Picris hieracioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(19)	hawkweed, orange, <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties

Name		Will be a "Class B designate" in all lands lying within:	
(20)	hawkweeds: All nonnative species and hybrids of the Meadow subgenus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H. flagellare</i>), yellow (<i>H. caespitosum</i>), and yellow-devil (<i>H. x floribundum</i>)	(a)	region 1
		(b)	region 2, except Thurston County
		(c)	region 3, except Cowlitz County
		(d)	region 4, except Pend Oreille and Stevens counties
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6
(21)	hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)	(a)	regions 1, 3, 5, and 6
		(b)	region 2, except King, Skagit, Snohomish, and Whatcom counties
		(c)	region 4, except Stevens County
(22)	herb-Robert, <i>Geranium robertianum</i>	(a)	regions 4, 5, and 6
(23)	hoary alyssum, <i>Berteroa incana</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Pend Oreille and Ferry counties
		(c)	region 5, except Klickitat County
(24)	houndstongue, <i>Cynoglossum officinale</i>	(a)	regions 1, 2, and 3
		(b)	Chelan and Douglas counties of region 4
		(c)	Yakima, Grant and Adams counties of region 5
		(d)	Benton and Franklin counties of region 6
(25)	indigobush, <i>Amorpha fruticosa</i>	(a)	regions 1, 2, and 4
		(b)	Lewis County of region 3
		(c)	region 5, except Klickitat County
(26)	knapweed, black, <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(27)	knapweed, brown, <i>Centaurea jacea</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(28)	knapweed, diffuse, <i>Centaurea diffusa</i>	(a)	region 1
		(b)	region 2
		(c)	region 3, except Cowlitz County
		(d)	Adams County of region 5
(29)	knapweed, meadow, <i>Centaurea x gerstlaueri</i>	(a)	regions 1 and 4
		(b)	region 2, except Whatcom County
		(c)	Thurston County of region 2, except below the ordinary high-water mark of the Nisqually River
		(d)	Lewis and Wahkiakum counties of region 3
		(e)	region 5, except Kittitas and Klickitat counties
		(f)	region 6, except Franklin and Walla Walla counties
(30)	knapweed, Russian, <i>Rhaponticum repens</i>	(a)	regions 1, 2, and 3
		(b)	Ferry and Pend Oreille counties of region 4
		(c)	Lincoln, Spokane, and Whitman counties of region 5
		(d)	Adams County of region 5, except for the area west of Highway 17 and north of Highway 26

Name		Will be a "Class B designate" in all lands lying within:	
(31)	knapweed, spotted, <i>Centaurea stoebe</i>	(e)	Asotin and Garfield counties of region 6
		(a)	region 1, except Grays Harbor
		(b)	region 2, except Whatcom County
		(c)	Clark, Lewis, and Wahkiakum counties of region 3
		(d)	Ferry and Douglas counties of region 4
		(e)	Adams, Grant and Yakima counties of region 5
(32)	knotweed, Bohemian, <i>Fallopia x bohémica</i>	(f)	region 6, except Columbia and Walla Walla counties
		(a)	Island and San Juan counties of region 2
(33)	knotweed, giant, <i>Fallopia sachalinensis</i>	(b)	Skamania County of region 3
		(c)	region 4, 5, and 6
		(a)	region 2, except King, Pierce, and Snohomish counties
(34)	knotweed, Himalayan, <i>Persicaria wallichii</i>	(b)	region 3, except Cowlitz and Lewis counties
		(c)	regions 4, 5, and 6
		(a)	region 1, except Pacific County
		(b)	region 2, except King and Pierce counties
(35)	knotweed, Japanese, <i>Fallopia japonica</i>	(c)	region 3, except Wahkiakum County
		(d)	region 4, 5, and 6
		(a)	Island, San Juan, and Whatcom counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, except Okanogan County
(36)	kochia, <i>Bassia scoparia</i>	(d)	region 5, except Spokane County
		(e)	region 6
		(a)	regions 1, 2, and 3
		(b)	Stevens and Pend Oreille counties of region 4
(37)	lesser celandine, <i>Ficaria verna</i>	(c)	Adams County of region 5
		(a)	region 1, 3, 4, 5, and 6
(38)	loosestrife, garden, <i>Lysimachia vulgaris</i>	(b)	region 2, except King and Whatcom counties
		(a)	regions 1, 2, 3, 4, 5, 6
(39)	loosestrife, purple, <i>Lythrum salicaria</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(40)	loosestrife, wand, <i>Lythrum virgatum</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(41)	Malta starthistle, <i>Centaurea melitensis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat and Whitman counties

Name		Will be a "Class B designate" in all lands lying within:	
(42)	parrotfeather, <i>Myriophyllum aquaticum</i>	(a)	region 1, except Pacific County
		(b)	regions 2, 4, 5, and 6
		(c)	Clark and Skamania counties of region 3
(43)	perennial pepperweed, <i>Lepidium latifolium</i>	(a)	regions 1, 2, and 4
		(b)	region 3, except Clark and Cowlitz counties
		(c)	Kittitas, Lincoln and Spokane counties of region 5
		(d)	Columbia and Garfield counties of region 6
(44)	poison hemlock, <i>Conium maculatum</i>	(a)	Clallam, Mason, and Pacific counties of region 1
		(b)	region 2, except King, Skagit, and Whatcom counties
		(c)	Clark and Skamania counties of region 3
		(d)	Chelan, Douglas, and Pend Oreille counties of region 4
		(e)	Grant, Kittitas and Lincoln counties of region 5
(45)	policeman's helmet, <i>Impatiens glandulifera</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except Thurston and Whatcom counties
(46)	puncturevine, <i>Tribulus terrestris</i>	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties
(47)	Ravenna grass, <i>Tripsidium ravennae</i>	(a)	Cowlitz County of region 3
		(b)	region 4
		(c)	region 5, except Yakima County
		(d)	region 6, except Benton County
(48)	rough chervil, <i>Chaerophyllum temulum</i>	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except for King County
(49)	rush skeletonweed, <i>Chondrilla juncea</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except all areas of Stevens County south of Township 29
		(c)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(d)	Asotin County of region 6
(50)	saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except King and Thurston counties
(51)	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County
(52)	shiny geranium, <i>Geranium lucidum</i>	(a)	regions 1, 4, 5, and 6
		(b)	region 2, except King, <u>Pierce</u> , Snohomish, and Thurston counties
		(c)	region 3, except Clark County
(53)	spurge flax, <i>Thymelaea passerina</i>	(a)	region 4, except Okanogan County
		(b)	regions 5 and 6
(54)	spurge laurel, <i>Daphne laureola</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Pierce counties
		(c)	region 3
		(d)	regions 4, 5, and 6
(55)	spurge, leafy, <i>Euphorbia virgata</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane County
		(c)	region 6, except Columbia County

Name		Will be a "Class B designate" in all lands lying within:	
(56)	spurge, myrtle, <i>Euphorbia myrsinites</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, Pierce, and Whatcom counties
		(c)	regions 3, 5, and 6
		(d)	region 4, except Okanogan County
(57)	sulfur cinquefoil, <i>Potentilla recta</i>	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County
(58)	tansy ragwort, <i>Jacobaea vulgaris</i>	(a)	Island and San Juan counties of region 2
		(b)	Clark and Wahkiakum counties of region 3
		(c)	regions 4, 5, and 6
(59)	thistle, musk, <i>Carduus nutans</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Douglas and Ferry counties
		(c)	region 5, except Kittitas County
(60)	thistle, plumeless, <i>Carduus acanthoides</i>	(a)	regions 1, 2, 3, 5, 6
		(b)	region 4, except those areas north of State Highway 20 in Stevens County
(61)	thistle, Scotch, <i>Onopordum acanthium</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane and Whitman counties
(62)	velvetleaf, <i>Abutilon theophrasti</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Yakima County
(63)	water primrose, <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(64)	white bryony, <i>Bryonia alba</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Whitman County
		(c)	Benton and Garfield counties of region 6
(65)	Wild basil/basil savory, <i>Clinopodium vulgare</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except for Skamania County
(66)	wild chervil, <i>Anthriscus sylvestris</i>	(a)	regions 1, 3, 4, and 6
		(b)	region 2, except Whatcom County
		(c)	region 5, except Whitman County
(67)	yellow archangel, <i>Lamium galeobdolon</i>	(a)	Clallam County of region 1
		(b)	Island, San Juan, Skagit, and Whatcom counties of region 2
		(c)	Cowlitz, Skamania, and Wahkiakum counties of region 3
		(d)	regions 4, 5, and 6
(68)	yellow floating heart, <i>Nymphoides peltata</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Stevens County
		(c)	region 5, except Spokane County
(69)	yellow nutsedge, <i>Cyperus esculentus</i>	(a)	regions 1 and 4
		(b)	region 2, except Skagit and Thurston counties
		(c)	region 3, except Clark County
		(d)	region 5, except Klickitat and Yakima counties
		(e)	region 6, except Franklin and Walla Walla counties

Name		Will be a "Class B designate" in all lands lying within:	
(70)	yellow starthistle, <i>Centaurea solstitialis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat, and Whitman counties

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
absinth wormwood	<i>Artemisia absinthium</i>
Austrian fieldcress	<i>Rorippa austriaca</i>
babysbreath	<i>Gypsophila paniculata</i>
beach grass, European, American, and hybrids	<i>Ammophila arenaria</i> , <i>A. breviligulata</i> , and <i>A. arenaria x breviligulata</i>
black henbane	<i>Hyoscyamus niger</i>
blackberry, evergreen	<i>Rubus laciniatus</i>
blackberry, Himalayan	<i>Rubus bifrons</i>
blackgrass	<i>Alopecurus myosuroides</i>
buffalobur	<i>Solanum rostratum</i>
cereal rye	<i>Secale cereale</i>
common barberry	<i>Berberis vulgaris</i>
common catsear	<i>Hypochaeris radicata</i>
common groundsel	<i>Senecio vulgaris</i>
common St. Johnswort	<i>Hypericum perforatum</i>
common teasel	<i>Dipsacus fullonum</i>
curly-leaf pondweed	<i>Potamogeton crispus</i>
English hawthorn	<i>Crataegus monogyna</i>
English ivy 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica' <i>Hedera helix</i> 'Baltica' <i>Hedera helix</i> 'Pittsburgh' <i>Hedera helix</i> 'Star'
Eurasian watermilfoil hybrid	<i>Myriophyllum spicatum</i> x <i>M. sibiricum</i>
field bindweed	<i>Convolvulus arvensis</i>
fragrant water lily	<i>Nymphaea odorata</i>
green alkanet	<i>Pentaglottis sempervirens</i>
hairy whitetop	<i>Lepidium appelianum</i>
hoary cress	<i>Lepidium draba</i>
Italian arum	<i>Arum italicum</i>
Japanese eelgrass	<i>Nanozostera japonica</i>
jointed goatgrass	<i>Aegilops cylindrica</i>
jubata grass	<i>Cortaderia jubata</i>
lawnweed	<i>Soliva sessilis</i>

Common Name	Scientific Name
longspine sandbur	<i>Cenchrus longispinus</i>
Medusahead	<i>Taeniatherum caput-medusae</i>
nonnative cattail species and hybrids	Including, but not limited to, <i>Typha angustifolia</i> , <i>T. domingensis</i> and <i>T. x glauca</i>
old man's beard	<i>Clematis vitalba</i>
oxeye daisy	<i>Leucanthemum vulgare</i>
pampas grass	<i>Cortaderia selloana</i>
perennial sowthistle	<i>Sonchus arvensis</i> ssp. <i>arvensis</i>
reed canarygrass	<i>Phalaris arundinacea</i>
Russian olive	<i>Elaeagnus angustifolia</i>
scentless mayweed	<i>Tripleurospermum inodorum</i>
smoothseed alfalfa dodder	<i>Cuscuta approximata</i>
spikeweed	<i>Centromadia pungens</i>
spiny cocklebur	<i>Xanthium spinosum</i>
spotted jewelweed	<i>Impatiens capensis</i>
Swainsonpea	<i>Sphaerophysa salsula</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
tree-of-heaven	<i>Ailanthus altissima</i>
ventenata	<i>Ventenata dubia</i>
white cockle	<i>Silene latifolia</i>
wild carrot (except subs. sativus where grown commercially or for food)	<i>Daucus carota</i>
<u>wild holly</u>	<u><i>Ilex species, not including holly found in managed landscapes, or where commercially or agriculturally grown</i></u>
yellow flag iris	<i>Iris pseudacorus</i>
yellow toadflax	<i>Linaria vulgaris</i>

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-120 State noxious weed control board—Nominations—Elections—Terms of office—Vacancies. (1) Nominations and elections to board positions are conducted by regular mail.

(2) The board calls for nominations to elected positions at least 60 days prior to expiration of position terms.

(3) The board sends ballots to eligible activated county noxious weed control boards or weed district directors by regular mail at least 45 days prior to expiration of each position term.

(4) Ballots must be returned no later than 30 days before expiration of each term. Only official ballots will be accepted. Photocopied ballots will be considered invalid.

(5) The board chairperson appoints a committee to count ballots and certify elections at least 30 days prior to expiration of each term.

(6) Results of elections are announced prior to the next scheduled board meeting.

(7) For the purpose of conducting nominations or elections, the board uses the current list of county noxious weed control board voting members and weed district directors.

(8) Any person who is a resident in and member of an activated county noxious weed control board in the counties represented by positions 1, 2, 3, and 4 may enter (~~his or her~~) their name, or that of any qualified person in nomination for election to the board position by voting members of the above activated county noxious weed control boards.

(9) Any director of an active weed district formed under chapter 17.04 or 17.06 RCW may enter a name in nomination for election to position 5 on the board.

(10) Each candidate or each person nominating such candidate must complete a certificate of nomination, and must return it to the board postmarked by the date specified.

(11) The board creates a ballot listing the names in alphabetical order beginning with the last name first, of the candidates nominated to the position of the board: Provided, That the board shall remove the name of any person nominated who notifies the board in writing that (~~he or she is~~) they are unwilling to serve on the board.

(12) The ballot, along with the statement, if any, of each candidate in the election will be mailed by regular mail to each voting member of an activated county noxious weed control board or director of an active weed district. Only county board members or weed district directors within the established position area are eligible to vote for the board member to represent that area.

(13) Each voting member of an activated county noxious weed control board or director of an activated weed district may cast one vote for the candidates appearing on the appropriate ballot and return it to the board as provided above and as per the dates specified.

(14) The candidate receiving the highest number of votes is elected: Provided, That if the candidate fails to receive more than 50 percent of the votes cast in an election, a second election will be held between such candidate and the candidate receiving the next highest votes and: Provided further, That if there is only one candidate, that candidate will be deemed elected unanimously.

(15) The term of office for all members of the board is four years from the date of election or appointment.

(16) Vacancies among board members appointed by the director will be filled by the director. Vacancies among elected members will be filled by special election by those entities eligible to elect that position for the expired term. Special elections follow the same procedure as regular elections and repeated as needed until position is filled. Board members appointed to fill vacancies will serve out the existing term.

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-130 State noxious weed control board—Organization.

The organization of the board is as follows:

(1) The officers of the board are the chairperson, vice chairperson, and secretary. The title of the chief administrative officer is the executive secretary.

(2) Duties of officers.

(a) The chairperson presides at all meetings of the board, has the power to appoint committees, acts as ex officio member of all committees except the executive committee, serves as chairperson of the executive committee, serves as official signer of agreements between the board and public or private agencies, and performs such other duties as pertain to the office.

(b) The vice chairperson performs the duties of the chairperson in ((his or her)) the chairperson's absence, acts as an ex officio member of all committees, and any other duties delegated by the chairperson. The vice chairperson will assume the duties of and serve out the term of the chairperson upon permanent departure of the chairperson.

(c) The secretary is the official keeper of the minutes and, approves them, and presents them to the board for adoption. In the absence of the chairperson and vice chairperson, the secretary performs the duties of the chairperson.

(d) The duties of the executive secretary, in addition to administrative duties assigned elsewhere in this chapter, are to keep a record of the proceedings of the board, notify all board members, county noxious weed control boards, and weed districts of meetings, act as an ex officio nonvoting member of all committees, negotiate agreements with public and private agencies on behalf of the board, and perform other responsibilities as delegated by the chairperson.

(3) Term of office. Term of office for officers of the board is two years following elections held at the first board meeting in January and ending at the January meeting of the second year.

(4) Election of officers. Elections will be held every two years at the January meeting of the first year. Officers are elected by a majority vote of the voting members present.

(5) Vacancies of officers other than chairperson, shall be filled for the remainder of the term, by election of the voting board members present.

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-135 State noxious weed control board—Meetings. (1)

All meetings of the board are open and public and all persons are permitted to attend any meeting of the board, except as otherwise provided in the Open Public Meetings Act, chapter 42.30 RCW.

(2) Members of the public are not required, as a condition to attendance at a board meeting, to register names, other information, or otherwise to fulfill any condition prior to attending.

(3) Interruptions. In the event that any meeting is interrupted by any person as to render the orderly conduct of the meeting unfeasible

ble, and order cannot be restored by the removal of individuals who are interrupting the meeting, the chairperson may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by a majority vote of the board members present. In such a session, the board will follow the procedures set forth in the Open Public Meetings Act (RCW 42.30.050).

(4) Adoption of rules, regulations, resolution, etc. The board shall not adopt any rules, regulations, resolution, etc. except in a meeting open to the public and then only at a meeting, the date of which is fixed by rule, or at a meeting of which notice has been given according to the provisions of the Open Public Meetings Act. Any action taken at meetings failing to comply with this section is null and void.

(5) Regular meetings—Schedule—Publication in State Register—Notice of change. The board will meet at least five times per year and at other times determined by the chairperson or by a majority of the voting members. If any regular meeting falls on a holiday, the meeting will be held on the next business day. The executive secretary files with the code reviser a schedule of the time and place of regular meetings on or before January of each year for publication in the Washington State Register. Notice of any change from this meeting schedule will be published in the State Register for distribution at least 20 days prior to the rescheduled meeting date.

(6) Notice. Each board member, county noxious weed control board, and weed district will be notified of public meetings and provided an agenda within 10 days.

(7) Special meetings. The 10-day notice may be waived for special meetings which may be called at any time by the chairperson, director, or a majority of the voting board members. Special meeting notification shall follow the procedures for special meetings set forth in the Open Public Meetings Act (RCW 42.30.080).

(8) Adjournments. If a meeting is adjourned before the advertised time, a written notice will be posted at the meeting place that specifies when the meeting was adjourned.

(9) Executive sessions.

(a) The board may hold an executive session during a regular meeting which may be called by the chairperson or a majority of voting board members present. No official actions will be taken at executive sessions. Executive sessions may deal only with matters authorized by RCW 42.30.110.

(b) Before convening in executive session, the chairperson shall publicly announce the purpose of excluding the public from the meeting place and the time when the executive session will be concluded. The executive session may be extended to a later time by announcement of the chairperson.

(10) Agenda. The agenda will be prepared by the executive secretary in consultation with the chairperson. Items may be submitted by all board members to the executive secretary at least 15 days prior to the board meeting.

(11) Attendance. Each board member is expected to attend all board and assigned committee meetings. In the event a board member is unable to attend, (~~he or she is~~) they are requested to provide the chairperson or executive secretary with the reasons for the absence prior to the meeting. Any voting member who misses two consecutive board meetings without providing the chairperson or the executive secretary with the reasons for the absences prior to the meeting may be

removed from the board, following due notice and a hearing. Removal procedures may be initiated by a quorum vote of the board.

(12) Voting procedures. Board voting procedures on all matters are as follows:

(a) Five voting members constitute a quorum to conduct the affairs of the board.

(b) The chairperson may vote on all matters coming before the board.

(c) A roll call of all voting board members present may be requested on all motions by any member.

(d) All members have the right to move or second motions.

(e) Proxy voting is not permitted.

(13) Minutes. The minutes of all regular and special meetings, except executive sessions, will be promptly recorded and such records are open to public inspection.

(14) Press releases. All press releases and official information concerning board activities will be released from the board office.

(15) Public participation.

(a) Any person wishing to make a formal presentation at a regularly scheduled meeting of the board must notify the executive secretary of the subject matter at least 15 days before the meeting.

(b) Permission to appear before the board will be granted by the executive secretary in consultation with the chairperson before the meeting. Permission includes the date and time of the meeting and the time set for formal presentation.

(c) The chairperson may, at (~~his or her~~) their discretion, recognize anyone in the audience who indicates at the time of the meeting a desire to speak.

AMENDATORY SECTION (Amending WSR 23-23-168, filed 11/21/23, effective 1/1/24)

WAC 16-750-137 State noxious weed control board—Conflict of interest. (1) When a member of the board is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the SNWCB, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member shall:

(a) Recuse themselves from the board discussion regarding the specific contract, sale, lease, purchase or grant;

(b) Recuse themselves from the board vote on the specific contract, sale, lease, purchase or grant; and

(c) Refrain from attempting to influence the remaining SNWCB members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) When a board member has an interest, financial or otherwise, direct or indirect, or has engaged in a business or transaction or professional activity, or has incurred an obligation of any nature, that is in conflict with the proper discharge of that board member's official duties, including the adoption of the state noxious weed list, the member shall:

(a) Recuse themselves from the board discussion regarding the decision implicated by the board member's conflict of interest;

(b) Recuse themselves from the board vote on the decision implicated by the board member's conflict of interest; and

(c) Refrain from attempting to influence the remaining SNWCB members in their discussion and vote regarding the decision implicated by the board member's conflict of interest.

(3) Under subsection (2) of this section, a board member has an interest that is in conflict with the proper discharge of their duties when the interest substantially impairs their ability to perform their duties as a board member in an objective and nonbiased manner. For example, a board member has such a conflict of interest where that board member is engaged in, or has a beneficial interest in an entity that is engaged in, the commercial production of a species that is being considered for addition on the state noxious weed list.

(4) The prohibition against discussion set forth in subsections (1)(a) and (c), (2)(a) and (c) of this section shall not prohibit the member of the SNWCB from using their general expertise to educate and provide general information on the subject area to the other members.

(5) If recusal occurs pursuant to subsection (1) or (2) of this section, the member of the SNWCB shall disclose to the public the reasons for (~~his or her~~) their recusal from any board action whenever recusal occurs. The SNWCB staff shall record each recusal and the basis for the recusal.

(6) Under subsection (1) of this section, "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase or grant.

WSR 24-20-111
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed October 1, 2024, 9:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-119.

Title of Rule and Other Identifying Information: Workers' compensation incentives: Preferred workers and stay-at-work. Chapter 296-16 WAC, Employer—Worker reemployment incentives; and chapter 296-16A WAC, Stay-at-work program.

Hearing Location(s): On November 12, 2024, at 10:00 a.m., at the Department of Labor and Industries (L&I) Headquarters, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically <https://lni-wa-gov.zoom.us/j/4283482697?omn=89161792824>, Meeting ID 428 348 2697; or join by phone (audio only) 253-215-8782 US (Tacoma), Meeting ID 428 348 2697. Find your local number <https://lni-wa-gov.zoom.us/j/4283482697?omn=89161792824>. The in-person, 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: Annie Peeples, L&I, Insurance Services, Employer Services, P.O. Box 44148, Olympia, WA 98504-4148, email Annie.Peeples@lni.wa.gov, fax 360-902-4988, beginning October 2, 2024, 8:00 a.m., by November 12, 2024, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Annie Peeples, phone 360-902-4723, fax 360-902-4998, TTY 360-902-5797, email Annie.Peeples@lni.wa.gov, by November 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to implement requirements of SHB 2127, chapter 90, Laws of 2024.

This rule making will also implement HB 1927 regarding reducing the number of consecutive days of time-loss required to qualify for preferred worker certification from 14 to seven days.

L&I is also conducting a separate rule making to amend chapter 296-19A WAC, Vocational rehabilitation, to implement 2024's SHB 2127.

Proposed amendments include:

WAC	Change
296-16-113 What are the preferred worker certification requirements for a worker with developmental disabilities as defined by RCW 71A.10.020?	<ul style="list-style-type: none"> For a worker with a date of injury on or after January 1, 2025, update requirement for preferred worker certification from 14 days of time-loss compensation benefits to seven days of time-loss compensations benefits. Removing the word consecutive, which was incorrect.
296-16-140 Which employers are eligible to benefit from the preferred worker program? 296-16-145 Who must confirm the worker has returned to work that is consistent with the worker's limitations and physical restrictions? 296-16-160 What must an employer do to qualify for benefits when hiring or reemploying a preferred worker?	For a worker with a date of injury on or after January 1, 2025: <ul style="list-style-type: none"> Remove requirement for approval of job descriptions by the injured worker's health care provider. Clarify that credentialed vocational rehabilitation professionals that approve job descriptions are employed by the department.

WAC	Change
296-16-150 What benefits can an eligible employer receive from the preferred worker program?	For a worker with a date of injury on or after January 1, 2025: <ul style="list-style-type: none"> • Maximum wage reimbursement period per claim is increased from 66 days to 120 days. • Maximum wage subsidy per claim increased from \$10,000 to \$25,000. • Maximum reimbursement for clothing per claim is increased from \$400 to \$1,000. • Maximum reimbursement for tools and equipment per claim is increased from \$2,500 to \$5,000. • Discretionary one time incentive payment for continuous employment without reduction in wages for 12+ months is increased from the lesser of 10 percent of the worker's wages or \$10,000 to \$25,000 with no consideration of the worker's wages. • Clarify that work must be approved, but not medically approved by the injured worker's provider.
296-16A-030 What can I be reimbursed for?	For a worker with a date of injury on or after January 1, 2025: <ul style="list-style-type: none"> • Maximum wage reimbursement period per claim is increased from 66 days to 120 days. • Maximum wage subsidy per claim increased from \$10,000 to \$25,000. • Maximum reimbursement for training costs per claim is increased from \$1,000 to \$2,000. • Maximum reimbursement for clothing per claim is increased from \$400 to \$1,000. • Maximum reimbursement for tools and equipment per claim is increased from \$2,500 to \$5,000.

Reasons Supporting Proposal: L&I must update these rules to implement the changes established by SHB 2127, chapter 90, Laws of 2024.

Statutory Authority for Adoption: RCW 51.04.020(1).

Statute Being Implemented: RCW 51.32.090 and 51.32.095.

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: Annie Peeples, Tumwater, Washington, 360-902-4723; 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. This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5) (b) (iii) because it is adopting or incorporating by reference without material change a Washington state statute.

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.

October 1, 2024
Joel Sacks
Director

OTS-5670.4

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-113 What are the preferred worker certification requirements for a worker with developmental disabilities as defined by RCW 71A.10.020? (1) A worker with a developmental disability may be certified as a preferred worker, in the sole discretion of the supervisor of industrial insurance or the supervisor's designee, if the worker has an open state fund insured claim for an industrial injury or occupational disease, or a closed state fund claim where the closure is not final, that results in payment of time-loss compensation benefits for:

(a) A period of at least ((fourteen consecutive)) seven days if the worker's date of injury is on or after January 1, 2025; or

(b) A period of at least 14 days if the worker's date of injury is prior to January 1, 2025.

(2) A worker with developmental disabilities does not need to apply for preferred worker certification. The department will evaluate the worker's eligibility for certification after receiving the employer's documentation described in WAC 296-16-160(3).

(3) If the health care provider has released the worker without restrictions and the worker is returning to the job of record, a job analysis or job description is not needed.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-140 Which employers are eligible to benefit from the preferred worker program? The following employers may be eligible to benefit from the preferred worker program if they employ a certified preferred worker, with a date of injury on or after January 1, 2025, in a job approved by ((the injured worker's health care provider and)) the department's credentialed vocational rehabilitation professional; or if they employ a certified preferred worker with a date of injury prior to January 1, 2025, in a job approved by the worker's health care provider and the department's credentialed vocational rehabilitation professional:

(1) A Washington state fund employer with an industrial insurance account in good standing with the department, as outlined in WAC 296-17-31004(4); or

(2) A self-insured employer who employs a worker who is certified as a preferred worker under a state fund claim.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-145 Who must confirm the worker has returned to work that is consistent with the worker's limitations and physical restrictions? (1) Preferred worker benefits for a worker with a date of in-

jury on or after January 1, 2025, are only available when the offered job is approved by

~~(a)) a credentialed vocational rehabilitation professional who meets the qualifications in WAC 296-19A-210~~

~~(b) The injured worker's health care provider).~~

~~((2) For the purposes of chapter 296-16 WAC, the injured worker's health care provider is defined as:~~

~~(a) The attending provider; or~~

~~(b) The current primary care provider; or~~

~~(c) In cases of diagnosed and accepted mental health conditions, the treating psychiatrist or psychiatric advanced registered nurse practitioner or, if there is no treating psychiatrist or psychiatric advanced registered nurse practitioner, the treating psychologist.~~

~~(3)) The final determination ((in subsection (1) of this section)) must be made by the department's credentialed vocational rehabilitation professional, who may make a referral to an independent credentialed vocational rehabilitation professional for an on-site job analysis or other evaluation that may be necessary to confirm the job is appropriate for the worker's restrictions.~~

(2) Preferred worker benefits for a worker with a date of injury prior to January 1, 2025, are only available when the offered job is approved by:

(a) A credentialed vocational rehabilitation professional who meets the qualifications in WAC 296-19A-210; and

(b) The injured worker's health care provider.

(3) For the purposes of this chapter, the injured worker's health care provider is defined as:

(a) The attending provider; or

(b) The current primary care provider; or

(c) In cases of diagnosed and accepted mental health conditions, the treating psychiatrist or psychiatric advanced registered nurse practitioner or, if there is no treating psychiatrist or psychiatric advanced registered nurse practitioner, the treating psychologist.

(4) The final determination in subsection (2) of this section must be made by the department's credentialed vocational rehabilitation professional, who may make a referral to an independent credentialed vocational rehabilitation professional for an on-site job analysis or other evaluation that may be necessary to confirm the job is appropriate for the worker's restrictions.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-150 What benefits can an eligible employer receive from the preferred worker program? (1) In the sole discretion of the supervisor of industrial insurance or the supervisor's designee, an eligible employer, insured through the state fund or self-insured, may receive benefits shown in the table below:

A certified preferred worker (certified on or after January 1, 2016;) who is hired by:		
Employer	State Fund employer (pays premiums to L&I)	Self-insured employer
(a) Wage, clothing, and equipment reimbursements specified in subsection (2) of this section.	X	X
(b) Continuous employment incentive specified in subsection (3) of this section.		
(c) Does not pay accident fund and medical aid fund premiums for hours worked by the preferred worker.	X	
(d) Will not have the cost of any new claim filed by that preferred worker charged to their experience rating.		
(e) Receives reimbursement from the second injury fund for all benefits paid on any new claim filed by that worker during the certification period.		X

(2) For a preferred worker with a date of injury on or after January 1, 2025:

(a) An eligible employer, insured through the state fund or self-insured, may be reimbursed for the following expenses actually incurred while employing a preferred worker (~~who was certified on or after January 1, 2016~~) with a date of injury on or after January 1, 2025, at work approved under WAC 296-16-145, performed during the worker's certification period:

~~((a))~~ (i) Fifty percent of basic gross wages paid to the worker for the work actually performed, for up to ~~((sixty-six))~~ 120 days in a ~~((twenty-four))~~ 24-month period ~~((and))~~ up to a maximum of ~~((ten thousand dollars))~~ \$25,000 per worker certification period.

~~((i))~~ (A) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

~~((ii))~~ (B) A partial day worked counts as one day. Example: The worker works a four-hour shift. This counts as one day out of the ~~((sixty-six))~~ 120.

~~((iii))~~ (C) If the worker's single shift spans two calendar days, that shift counts as one day. Example: The worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the ~~((sixty-six))~~ 120.

~~((iv) The sixty-six)~~ (D) The 120 days do not have to be consecutive.

~~((v))~~ (E) The employer may choose which ~~((sixty-six))~~ 120 days to seek reimbursement for.

~~((vi))~~ (F) The employer cannot be reimbursed for dates the employer employed the worker that are more than ~~((twenty-four))~~ 24 months after the earliest day the department has already reimbursed on the claim. Example: The first work date for which the employer was reimbursed was February 1, 2016. The ~~((twenty-four))~~ 24 month eligibility period ends January 31, 2018.

~~((vii))~~ (G) The employer must submit the request for reimbursement within one year of the date the work was performed.

~~((viii))~~ (H) The employer must submit to the department documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

~~((b))~~ (ii) Clothing the employer purchased for the worker, necessary to perform the ~~((medically))~~ approved work, up to ~~((four-hundred-dollars))~~ \$1,000 per worker certification period.

~~((i))~~ (A) The department will not reimburse the employer for any clothing the employer provided to the worker that the employer normally provides to its workers.

~~((ii))~~ (B) When the work ends, the clothing belongs to the worker.

~~((iii))~~ (C) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

~~((e))~~ (iii) Tools and equipment the employer purchased to enable the worker to perform the ~~((medically))~~ approved work, up to ~~((two-thousand-five-hundred-dollars))~~ \$5,000 per worker certification period.

~~((i))~~ (A) The department will not reimburse the employer for any tools and equipment the employer provided to the worker that the employer normally provides to its workers.

~~((ii))~~ (B) The employer cannot be reimbursed for tools and equipment purchased prior to offering the job to the worker.

~~((iii))~~ (C) When the work ends, the tools and equipment belong to the employer.

~~((iv))~~ (D) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

~~((3))~~ (b) An eligible employer who continuously employs a certified preferred worker at the ~~((medically))~~ approved job without reduction in base wages for at least ~~((twelve))~~ 12 consecutive months, beginning on or after January 1, ~~((2016))~~ 2025, may receive a one-time continuous employment incentive payment at the sole discretion of the supervisor of industrial insurance or the supervisor's designee.

~~((a))~~ (i) The ~~((twelve))~~ 12 months begin the date the worker is certified as a preferred worker or the first date of employment, whichever is later.

~~((b))~~ (ii) For purposes of this section, "continuous employment" is defined as maintaining the same work pattern as the ~~((medically))~~ approved job date of hire. "Same work pattern" generally refers to the number of hours worked per week and the worker's primary shift, for example, days, swing, or graveyard shift, as long as total hours are not reduced. For example, a farm laborer returns to approved work as an employee in the farm's retail outlet, Monday through Thursday, 8:00 a.m. to 4:00 p.m., ~~((thirty-two))~~ 32 hours per week. A month later, the schedule changes to Tuesday through Friday, 8:00 a.m. to 4:00 p.m., ~~((thirty-two))~~ 32 hours per week. The work pattern is the

same as the (~~medically~~) approved job date of hire. However, a change to shift hours that are 4:00 p.m. to midnight may be a change in work pattern.

~~((e))~~ (iii) "Without reduction" means the worker receives the same base wage or greater from the date of hire throughout the ~~((twelve))~~ 12-month period. In addition, the employer must continue any health care benefits the certified preferred worker had at the time of hire, unless these benefits are inconsistent with the employer's current benefit program for workers.

~~((d))~~ (iv) The one-time payment is ~~((equal to the lesser of ten percent of the worker's wages or ten thousand dollars. Wages for the one-time payment include commissions and bonuses paid, but do not include tips, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments))~~ \$25,000.

~~((e))~~ (v) Only one continuous employment incentive is payable per worker certification period.

~~((f))~~ (vi) The employer must submit the request for the continuous employment incentive within one year of the date the ~~((twelve))~~ 12 months ended.

~~((4))~~ (c) If the department receives a valid reimbursement or incentive request from different employers within the same worker certification period, the requests will be paid in the order received by the department up to the limits described.

~~((5))~~ (d) The employer cannot be reimbursed under both the stay at work and preferred worker programs for the same dates worked or expenses incurred.

(3) For a preferred worker with a date of injury prior to January 1, 2025:

(a) An eligible employer, insured through the state fund or self-insured, may be reimbursed for the following expenses actually incurred while employing a preferred worker with a date of injury prior to January 1, 2025, and who was certified on or after January 1, 2016, at work approved under WAC 296-16-145, performed during the worker's certification period:

(i) Fifty percent of basic gross wages paid to the worker for the work actually performed, for up to 66 days in a 24-month period and a maximum of \$10,000 per worker certification period.

(A) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(B) A partial day worked counts as one day. Example: The worker works a four-hour shift. This counts as one day out of the 66.

(C) If the worker's single shift spans two calendar days, that shift counts as one day. Example: The worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the 66.

(D) The 66 days do not have to be consecutive.

(E) The employer may choose which 66 days to seek reimbursement for.

(F) The employer cannot be reimbursed for dates the employer employed the worker that are more than 24 months after the earliest day the department has already reimbursed on the claim. Example: The first work date for which the employer was reimbursed was February 1, 2016. The 24-month eligibility period ends January 31, 2018.

(G) The employer must submit the request for reimbursement within one year of the date the work was performed.

(H) The employer must submit to the department documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

(ii) Clothing the employer purchased for the worker, necessary to perform the medically approved work, up to \$400 per worker certification period.

(A) The department will not reimburse the employer for any clothing the employer provided to the worker that the employer normally provides to its workers.

(B) When the work ends, the clothing belongs to the worker.

(C) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(iii) Tools and equipment the employer purchased to enable the worker to perform the medically approved work, up to \$2,500 per worker certification period.

(A) The department will not reimburse the employer for any tools and equipment the employer provided to the worker that the employer normally provides to its workers.

(B) The employer cannot be reimbursed for tools and equipment purchased prior to offering the job to the worker.

(C) When the work ends, the tools and equipment belong to the employer.

(D) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(b) An eligible employer who continuously employs a certified preferred worker at the medically approved job without reduction in base wages for at least 12 consecutive months, beginning on or after January 1, 2016, may receive a one-time continuous employment incentive payment at the sole discretion of the supervisor of industrial insurance or the supervisor's designee.

(i) The 12 months begin the date the worker is certified as a preferred worker or the first date of employment, whichever is later.

(ii) For purposes of this section, "continuous employment" is defined as maintaining the same work pattern as the medically approved job date of hire. "Same work pattern" generally refers to the number of hours worked per week and the worker's primary shift, for example, days, swing, or graveyard shift, as long as total hours are not reduced. For example, a farm laborer returns to approved work as an employee in the farm's retail outlet, Monday through Thursday, 8:00 a.m. to 4:00 p.m., 32 hours per week. A month later, the schedule changes to Tuesday through Friday, 8:00 a.m. to 4:00 p.m., 32 hours per week. The work pattern is the same as the medically approved job date of hire. However, a change to shift hours that are 4:00 p.m. to midnight may be a change in work pattern.

(iii) "Without reduction" means the worker receives the same base wage or greater from the date of hire throughout the 12-month period. In addition, the employer must continue any health care benefits the certified preferred worker had at the time of hire, unless these benefits are inconsistent with the employer's current benefit program for workers.

(iv) The one-time payment is equal to the lesser of 10 percent of the worker's wages or \$10,000. Wages for the one-time payment include commissions and bonuses paid, but do not include tips, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(v) Only one continuous employment incentive is payable per worker certification period.

(vi) The employer must submit the request for the continuous employment incentive within one year of the date the 12 months ended.

(c) If the department receives a valid reimbursement or incentive request from different employers within the same worker certification period, the requests will be paid in the order received by the department up to the limits described.

(d) The employer cannot be reimbursed under both the stay at work and preferred worker programs for the same dates worked or expenses incurred.

AMENDATORY SECTION (Amending WSR 16-13-116, filed 6/21/16, effective 7/22/16)

WAC 296-16-160 What must an employer do to qualify for benefits when hiring or reemploying a preferred worker? (1) An employer must employ the certified preferred worker in a job that:

(a) Will continue to be available into the foreseeable future; and

(b) Is confirmed as consistent with the worker's permanent work restrictions as outlined in WAC 296-16-145; and

(c) Addresses a business need or provides economic value to the employer.

(2) The employer will not be eligible for preferred worker incentives if the offered job is any of the following:

(a) The job of injury with minor or no modifications;

(b) Work that is beyond the worker's medical restrictions;

(c) Work which requires training beyond the usual and customary training provided by the employer to similar employees;

(d) On-the-job training.

(3) Except for tools and equipment as described in WAC 296-16-150 (2)(c), and the continuous employment incentive as described in WAC 296-16-150(3), in no case will the employer receive any preferred worker benefits for dates worked prior to the department's receipt of all required documentation. The employer must submit to the department:

(a) For a preferred worker with a date of injury on or after January 1, 2025, a copy of the completed job analysis or department's job description form (~~(, approved by the worker's health care provider; and)~~) or for a preferred worker with a date of injury prior to January 1, 2025, a copy of the completed job analysis or department's job description form approved by the worker's health care provider; and

(b) The job offer, signed by the worker; and

(c) The preferred worker request form, available on the department's website, completed and signed by the employer.

(d) Once all appropriately completed documents described in (a) through (c) of this subsection have been received by the department, the employer can be reimbursed for the cost of any tools and equipment as described in WAC 296-16-150 (2)(c) if purchased within (~~(sixty))~~ 60 days of the first date of the preferred worker's employment.

(4) After the offered job is approved by the department's credentialed vocational rehabilitation professional, preferred worker benefits can be granted. The benefit start date will be no earlier than

the first workday after the department receives the employer's completed documentation.

(5) If the job is offered after the preferred worker's claim is closed, the worker's restrictions at time of claim closure will apply.

OTS-5671.1

AMENDATORY SECTION (Amending WSR 12-09-056, filed 4/17/12, effective 5/21/12)

WAC 296-16A-030 What can I be reimbursed for? If the attending provider restricts your worker from performing his or her usual work, you may ask the attending provider to release your worker to perform light duty or transitional work for you. If the attending provider does so, you may employ your worker consistent with the attending provider's release. You can then receive reimbursement for some of the costs associated with that employment:

(1) **For a worker claim with a date of injury on or after January 1, 2025:**

(a) **Wages:** (~~Fifty~~) 50 percent of basic gross wages you paid your worker, for up to (~~sixty-six~~) 120 days actually worked in a (~~twenty-four~~) 24-month period, up to a maximum of (~~ten thousand dollars~~) \$25,000 total wage reimbursement per claim.

(~~(a)~~) (i) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(~~(b)~~) (ii) A partial day worked counts as one day. Example: Your worker works a four-hour shift. This counts as one day out of the (~~sixty-six~~) 120.

(~~(c)~~) (iii) If your worker's single shift spans two calendar days that shift counts as one day. Example: Your worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the (~~sixty-six~~) 120.

(~~(d)~~) (iv) The (~~sixty-six~~) 120 days do not have to be consecutive.

(~~(e)~~) (v) If the light duty or transitional work lasts more than (~~sixty-six~~) 120 days, you may choose which (~~sixty-six~~) 120 days to seek reimbursement for.

(~~(f)~~) (vi) You may not be reimbursed more than once for the same days worked. For example, if your worker has two active claims you cannot be reimbursed wage subsidies for the same dates on both claims.

(~~(g)~~) (vii) We cannot reimburse you for dates you employed your worker that are more than (~~twenty-four~~) 24 months after the earliest day we have already reimbursed on the claim. Example: The first work date for which you were reimbursed was February 1, 2012. Your (~~twenty-four~~) 24-month eligibility period ends January 31, 2014.

(~~(h)~~) (viii) You must submit your request for reimbursement within one year of the date the work was performed.

(~~(2)~~) (b) **Training costs** you incurred to enable your worker to perform the light duty or transitional work, up to (~~one thousand dollars~~) \$2,000 per claim:

~~((a))~~ (i) Training expenses include the purchase of books or materials, or payment to someone outside your organization to provide training (tuition or fees).

~~((b))~~ (ii) We will not reimburse you for the value of "in-house" training provided by your organization.

~~((e))~~ (iii) You must submit your request for reimbursement within one year of the date of purchase.

~~((3))~~ (c) **Clothing** you provided your worker, necessary to perform the light duty or transitional work, up to ~~((four hundred dollars))~~ \$1,000 per claim:

~~((a))~~ (i) If you normally provide such clothing to your workers, we cannot reimburse you.

~~((b))~~ (ii) When the work ends, the clothing belongs to your worker.

~~((e))~~ (iii) You must submit your request for reimbursement within one year of the date of purchase.

~~((4))~~ (d) **Tools and equipment** you purchased to enable your worker to perform the light duty or transitional work, up to ~~((two thousand five hundred dollars))~~ \$5,000 per claim:

~~((a))~~ (i) If you normally provide such tools and equipment to your workers, we cannot reimburse you.

~~((b))~~ (ii) When the work ends, the tools and equipment belong to the employer.

~~((e))~~ (iii) You must submit your request for reimbursement within one year of the date of purchase.

(2) For a worker claim with a date of injury prior to January 1, 2025:

(a) **Wages:** 50 percent of basic gross wages you paid your worker, for up to 66 days actually worked in a 24-month period, up to a maximum of \$10,000 total wage reimbursement per claim.

(i) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(ii) A partial day worked counts as one day. Example: Your worker works a four-hour shift. This counts as one day out of the 66.

(iii) If your worker's single shift spans two calendar days that shift counts as one day. Example: Your worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the 66.

(iv) The 66 days do not have to be consecutive.

(v) If the light duty or transitional work lasts more than 66 days, you may choose which 66 days to seek reimbursement for.

(vi) You may not be reimbursed more than once for the same days worked. For example, if your worker has two active claims you cannot be reimbursed wage subsidies for the same dates on both claims.

(vii) We cannot reimburse you for dates you employed your worker that are more than 24 months after the earliest day we have already reimbursed on the claim. Example: The first work date for which you were reimbursed was February 1, 2012. Your 24-month eligibility period ends January 31, 2014.

(viii) You must submit your request for reimbursement within one year of the date the work was performed.

(b) **Training costs** you incurred to enable your worker to perform the light duty or transitional work, up to \$1,000 per claim:

(i) Training expenses include the purchase of books or materials, or payment to someone outside your organization to provide training (tuition or fees).

(ii) We will not reimburse you for the value of "in-house" training provided by your organization.

(iii) You must submit your request for reimbursement within one year of the date of purchase.

(c) **Clothing** you provided your worker, necessary to perform the light duty or transitional work, up to \$400 per claim:

(i) If you normally provide such clothing to your workers, we cannot reimburse you.

(ii) When the work ends, the clothing belongs to your worker.

(iii) You must submit your request for reimbursement within one year of the date of purchase.

(d) **Tools and equipment** you purchased to enable your worker to perform the light duty or transitional work, up to \$2,500 per claim:

(i) If you normally provide such tools and equipment to your workers, we cannot reimburse you.

(ii) When the work ends, the tools and equipment belong to the employer.

(iii) You must submit your request for reimbursement within one year of the date of purchase.

WSR 24-20-112
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed October 1, 2024, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-120.

Title of Rule and Other Identifying Information: Chapter 296-19A WAC, Vocational rehabilitation.

Hearing Location(s): On November 12, 2024, at 10:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501; or join electronically <https://lni-wa.gov.zoom.us/j/4283482697?omn=89161792824>, Meeting ID 428 348 2697; or join by phone (audio only) 253-215-8782 US (Tacoma), Meeting ID 428 348 2697. Find your local number <https://lni-wa.gov.zoom.us/j/kdOkNlaejZ>. The in-person and virtual/telephone hearing starts 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: Sarah Moran, L&I, Insurance Services, Return to Work Partnerships, P.O. Box 44326, Olympia, WA 98504-4326, email Sarah.Moran@lni.wa.gov, fax 360-902-5035, beginning October 2, 2024, 8:00 a.m., by November 12, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sarah Moran, phone 360-902-6362, fax 360-902-5035, TTY 360-902-5797, email Sarah.Moran@lni.wa.gov, by November 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to align chapter 296-19A WAC with the correct RCW subsection references, update benefit amounts for job modification and prejob accommodations, and clarify the ability of vocational counselors to help workers access skill enhancement training and how these skills are reported.

Proposed amendments include:

The following amendments are proposed to reference the correct RCW subsection:

- WAC 296-19A-040 What vocational rehabilitation services require authorization?
- WAC 296-19A-050 What are vocational recovery services?
- WAC 296-19A-065 What is an ability to work assessment?
- WAC 296-19A-090 What are vocational rehabilitation plan development services?
- WAC 296-19A-098 How often must written progress reports be submitted when plan development services are provided for state fund claims?
- WAC 296-19A-100 What reports are required when vocational rehabilitation plan development services are completed?
- WAC 296-19A-130 What are the requirements for a forensic evaluation?
- WAC 296-19A-191 When may the department authorize prejob accommodations?
- WAC 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1?

WAC 296-19A-050 What are vocational recovery services?

- Clarify that vocational counselors have the ability to help workers access skill enhancement training.

WAC 296-19A-070 What information must an assessment report include?

- Clarify how vocational counselors report skills obtained from skill enhancement training.

WAC 296-19A-100 What reports are required when vocational rehabilitation plan development services are completed?

- Clarify how vocational counselors report skills obtained from skill enhancement training.

WAC 296-19A-190 How much is available for job modification assistance?

- Maximum amount allowed for job modifications is increased from \$5,000 to \$10,000.

WAC 296-19A-192 How much is available for prejob accommodations?

- Maximum amount allowed for prejob accommodations is increased from \$5,000 to \$10,000.

WAC 296-19A-570 What factors will the department consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured workers?

- Replace RCW 51.32.099 with RCW 51.32.096. SHB 1496, chapter 137, Laws of 2015, added a new section codified as RCW 51.32.096, replacing RCW 51.32.099 which subsequently expired.

Reasons Supporting Proposal: In 2024, the Washington state legislature passed SHB 2127 (chapter 90, Laws of 2024) concerning a new vocational skill enhancement benefit and increased amounts for job modification and prejob accommodations. Rule making is needed to align L&I's vocational rules with the statutory changes.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.096, 51.36.100, and 51.36.110.

Statute Being Implemented: Chapter 51.32 RCW; RCW 51.32.090, 51.32.095, 51.32.096, and 51.32.250.

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: Sarah Moran, Tumwater, Washington, 360-902-6362; Implementation 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. This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because it is adopting or incorporating by reference without material change a Washington state statute.

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.

October 1, 2024
Joel Sacks
Director

OTS-5882.1

AMENDATORY SECTION (Amending WSR 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-040 What vocational rehabilitation services require authorization? (1) All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: Vocational recovery; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Self-insurers may also make any of the listed referrals and/or provide any other services they consider appropriate to address priorities listed in RCW 51.32.095(~~((+2))~~) (3). Each referral is a separate authorization for vocational rehabilitation services.

(2) Option 2 vocational services are considered authorized for state fund and self-insured claims once the department accepts the worker's election of Option 2. However, the services can only be provided upon request from the worker to the vocational provider.

AMENDATORY SECTION (Amending WSR 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-050 What are vocational recovery services? (1) Vocational recovery services are intended to ensure appropriate support is provided to an industrially injured or ill worker so that they return to work, continue to work, or are enabled to become employable at gainful employment consistent with the priorities listed in RCW 51.32.095 (~~((+2))~~) (3) (a) through (g) with the highest priority given to returning a worker to employment:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills; and
- (g) Modification of a new job with a new employer.

(2) In each case referred to a vocational provider, the vocational recovery services include work disability prevention best practices identified by the department and periodically published through policy bulletins available from the department and recorded with the office of the code reviser. These best practice services include, but are not limited to, the following which must be addressed by the vocational provider prior to consideration of when and which of the priorities listed in subsection (1) of this section may be most appropriate for the worker:

- (a) Identify and, as appropriate, use their skills and professional judgment along with accessing available community resources that do not impose a cost on the department or injured worker to proactive-

ly address barriers that may interfere with or prevent the worker from returning to any work, including transitional or modified work;

(b) Assist the worker in identifying return to work goals and steps necessary to achieve those goals, including participation by the worker in optional skill enhancement training that may be authorized and paid for by the department or self-insured employer; and

(c) Assess the worker's potential preferred worker status, educating the worker and employer(s) on transitional and permanently modified work, the Washington stay at work program, and the preferred worker benefits, if appropriate.

(3) Vocational recovery services also include, but are not limited to, those described below specific to the priorities listed in RCW 51.32.095 ~~((2))~~ (3).

(a) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), in evaluating the priorities listed in RCW 51.32.095 ~~((2))~~ (3)(a) through (d) which involve return to work with the same employer, the vocational provider will:

(i) Except for return to work at the previous job with the same employer, assist the worker with job readiness and job placement services, if applicable;

(ii) Plan and work with the worker, the employer, the attending provider, and the department or self-insured employer to identify and pursue possible return to work opportunities and any necessary job modifications and prejob accommodations, when applicable;

(iii) Work with the worker and the employer to develop job description(s) or job analysis(es) that include the physical demands necessary to perform the work. Vocational providers must use their professional judgment when determining whether a job description or job analysis is appropriate, except during an ability to work assessment as outlined in WAC 296-19A-065 during which job analyses are required;

(iv) Based on the job description or descriptions, obtain approval from the attending provider that the job or jobs are appropriate for the worker's accepted condition(s), when applicable;

(v) Assist the employer with an offer of employment, and assist with resolution of disagreements about job offers, if needed;

(vi) Assist the employer with accessing return to work incentives such as those offered through the Washington stay at work and preferred worker programs, when applicable;

(vii) Document all offers of employment and the worker's response;

(viii) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.

(b) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), for the priorities listed in RCW 51.32.095 ~~((2))~~ (3)(e) through (g) which involve return to work at a job with a new employer, the vocational provider will:

(i) Assist the worker with job readiness and job placement services, and in identifying opportunities through WorkSource partners and other organizations that support return to work;

(ii) Assist the worker to develop a resume or work history as a tool to identify the worker's knowledge, skills, and interests;

(iii) Plan and work with the worker, the new employer, if applicable, the attending provider, and the department or self-insured employer on necessary job modifications and prejob accommodations;

(iv) Work with the worker and with the new employer, if applicable, to develop a job description that includes the physical demands necessary to perform the work;

(v) Based on the job description or descriptions, obtain medical approval from the worker's attending provider that the job or jobs are appropriate for the worker's accepted conditions;

(vi) Assist the new employer with an offer of employment, if needed;

(vii) Assist the new employer with accessing return to work incentives such as those offered through the preferred worker program, if applicable;

(viii) Document all offers of employment and the worker's response;

(ix) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.

(4) To ensure appropriate assistance has been provided or offered to the worker so that they return to work, continue to work, or are enabled to become employable as outlined in subsections (2) and (3) of this section the vocational provider must document their efforts to provide the services outlined in subsection (3)(a)(i) through (viii) and (b)(i) through (ix) of this section, including offers of employment and the worker's response(s), prior to requesting a referral for an ability to work assessment as described in WAC 296-19A-065.

AMENDATORY SECTION (Amending WSR 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-065 What is an ability to work assessment? (1)

Workers may be referred to a vocational provider for assessment activities at the discretion of the department or self-insured employer to determine if a worker is eligible to receive vocational rehabilitation plan development services. Assessment activities will generally occur after all of the following:

(a) The vocational provider has applied the services outlined in WAC 296-19A-050 What are vocational recovery services?;

(b) The services did not result in a return to work or a valid job offer or offers; and

(c) The vocational provider has documented such efforts.

(2) During an ability to work assessment, the vocational provider will maintain regular communication with the worker, addressing the worker's concerns, assisting to resolve barriers, as appropriate, and updating them on assessment activities to include information requested and/or collected.

(3) Assessment activities may include, but are not limited to, the following:

(a) Documenting work restrictions;

(b) Performing job analyses;

(c) Evaluating the worker's ability to work at the job of injury or any other job including an assessment of the worker's transferable skills;

(d) Conducting labor market surveys as defined in WAC 296-19A-140;

(e) Evaluating the worker's ability to benefit from plan development services, including any and all vocational testing considered

necessary to support a recommendation for retraining eligibility, if appropriate;

(f) Documenting a recommendation to the department or self-insured employer on whether the worker is employable at gainful employment, consistent with RCW 51.32.095 (~~((2))~~) (3)(a) through (g) or whether vocational plan development is both necessary and likely to make the worker employable at gainful employment;

(g) Assessing the worker's need for preferred worker status and when appropriate educating the worker on the preferred worker benefit; and

(h) If a worker indicates an interest in returning to work and, in the professional judgment of the vocational provider, the worker has the necessary skills and abilities to do so consistent with their medical restrictions, the vocational provider may provide those services listed in WAC 296-19A-050 as they deem appropriate.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-070 What information must an assessment report include? (1) The assessment report must include information and evaluation of the worker's:

(a) Age;

(b) Education, including information about education level, courses or transcripts, licenses, and certifications or registrations that the worker may have obtained in the past;

(c) Complete work history, addressing any gaps in employment;

(d) Transferable skills and experience, whether obtained from prior employment, prior courses and training, prior vocational rehabilitation services or plans, or nonwork related activities such as hobbies and/or volunteer experience;

(e) Skills gained through skill enhancement training pursuant to RCW 51.32.095(2);

(f) Physical and mental conditions proximately caused by the worker's injury or occupational disease, and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;

~~((f))~~ (g) Preexisting physical and mental conditions and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;

~~((g))~~ (h) Postinjury physical and mental conditions and the effect of those nonrelated conditions on the worker's ability to work and/or benefit from vocational services;

~~((h))~~ (i) Wage and employment pattern at the time of injury;

~~((i))~~ (j) Barriers to employment, including whether the barriers can be removed and/or what is needed to address the barriers; and

~~((j))~~ (k) Labor market information as defined in WAC 296-19A-140.

(2) If the vocational rehabilitation provider cannot obtain one or more of the above categories of information, the provider must document in the report all efforts made to obtain the information and why the information could not be obtained.

(3) The report must address whether the worker can return to work in any capacity with the employer of injury or if the worker is employable at a new job with transferable skills.

(4) The assessment report must also include one of the following recommendations:

(a) **Able to work:** The worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, a list of job possibilities for which the worker is qualified;

(ii) A medically approved job analysis for the job or jobs at which the worker is able to work. When this is not obtainable, medically approved physical capacities information regarding the worker's ability to perform the job may be used; and

(iii) Labor market information as defined in WAC 296-19A-140 supporting the vocational rehabilitation provider's recommendation. Labor market information is not necessary when the worker is medically released to work for their job of injury at their previous work pattern;

(b) **Further services appropriate:** Vocational rehabilitation services are necessary and likely to enable the worker to become employable at gainful employment. The report must include:

(i) The specific return to work possibilities investigated and the reasons why they were ruled out which may include labor market information as defined in WAC 296-19A-140;

(ii) An analysis explaining how vocational rehabilitation plan development services are likely to enable the worker to become employable at gainful employment. The analysis may include but is not limited to:

(A) Vocational evaluation that addresses the worker's ability to benefit from vocational rehabilitation services;

(B) Information regarding the worker's medical and/or psychological condition(s);

(C) Labor market survey that was conducted as defined in WAC 296-19A-140;

(D) A discussion of the worker's participation in vocational activities to date; and

(E) Any other relevant information.

(c) **Further services not appropriate:** The worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational rehabilitation services are not appropriate;

(ii) Barriers identified that will make it unlikely the worker will benefit from vocational rehabilitation services, consistent with the requirements in WAC 296-19A-010(1);

(iii) Medical, psychological or other vocationally relevant information; and

(iv) Labor market information as defined in WAC 296-19A-140 and other information, as necessary, supporting the vocational rehabilitation provider's recommendations.

(d) **Return to work:** The worker has returned to work. The report must specify and/or document attempts to obtain the following information:

(i) A description of the job the worker returned to;

(ii) The name of the employer;

(iii) The date that the worker returned to work; and

(iv) The worker's monthly wages.

(5) When the worker has returned to work to the job of injury or is medically released without restrictions, the vocational rehabilitation provider should complete the closing report. No other work should be performed without the prior authorization of the referral source.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-090 What are vocational rehabilitation plan development services? Vocational rehabilitation plan development services are authorized to obtain the vocational rehabilitation provider's assistance in producing a vocational rehabilitation plan for a worker. The vocational rehabilitation provider will work with the worker in the development of the plan. Covered services include, but are not limited to:

(1) An initial meeting between the assigned vocational rehabilitation provider and the worker.

The assigned vocational rehabilitation provider must meet with the worker in person and fully inform the worker of the return to work priorities set forth in RCW 51.32.095(~~((+2+))~~) (3) and of his or her rights and responsibilities under the workers' compensation vocational system. The vocational rehabilitation provider must use tools provided by the department in order to document this requirement.

Exception: For out-of-state referrals, the counselor providing direct services to the worker may be considered the assigned vocational rehabilitation provider for purposes of this meeting.

The rights and responsibilities include but are not limited to:

(a) The responsibility of the worker and vocational rehabilitation provider to cooperate with the plan development process and to submit a plan within (~~(ninety)~~) 90 calendar days;

(b) An explanation of the benefits available to the worker, including the right to choose to participate in retraining or elect option 2 benefits after a plan has been approved; and

(c) An explanation of the possible action the department or self-insured employer may take under RCW 51.32.110 and WAC 296-14-410 should the worker be determined to be noncooperative during the plan development process.

(2) Vocational counseling and occupational exploration;

(3) Identifying a potential job goal and estimating the training needs, resources, and expenses necessary to complete that goal;

(4) Vocational testing; and

(5) Coordinating with medical providers to obtain approval of job analyses and a release to participate in a vocational rehabilitation plan.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-098 How often must written progress reports be submitted when plan development services are provided for state fund claims? (1) The vocational rehabilitation provider must submit a written progress report to the department every (~~(thirty)~~) 30 calendar days from the date of the electronic referral or upon request of the department.

(2) The first progress report must document the assigned vocational rehabilitation provider met with the worker in person and fully informed the worker of the return to work priorities in RCW 51.32.095(~~((+2+))~~) (3) and his or her rights and responsibilities.

(3) All progress reports must summarize progress during the most recent reporting period and include the following:

- (a) Description of the return to work goals explored, accepted or ruled out, including any jobs offered by the employer;
- (b) Review of the return to work priorities being addressed;
- (c) Summary of all actions taken, including progress on previously recommended actions;
- (d) Description of the worker's participation in vocational activities and compliance with the responsibilities in WAC 296-19A-030(4).
- (e) Identification and analysis of any barriers preventing completion of the referral; and
- (f) Description of the specific actions the vocational rehabilitation provider intends to take to overcome barriers and the expected time frame to complete those actions.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-100 What reports are required when vocational rehabilitation plan development services are completed? When plan development services are completed, the vocational rehabilitation provider must submit one of the following reports:

(1) **Vocational rehabilitation plan.** The vocational rehabilitation provider must address the return to work priorities listed in RCW 51.32.095(~~(+2)~~) (3) in the plan and explain why each preceding priority would not help the worker return to work. The vocational plan must also include the following information:

- (a) An assessment of the worker's skills and abilities considering the worker's:
 - (i) Physical capacities and mental status;
 - (ii) Aptitudes;
 - (iii) Transferable skills gained through prior work experience, education, training, hobbies, volunteer experience or other nonwork related activities;
 - (iv) Skills gained through skill enhancement training pursuant to RCW 51.32.095(2);
- (b) Proposed occupational goal;
- (c) The services necessary to enable the worker to become employable in the labor market;
- (d) Labor market survey as defined in WAC 296-19A-140, supportive of the worker's employability upon plan completion;
- (e) Documentation of the time and costs required for completion of the plan;
- (f) A medically approved job analysis for the proposed retraining job goal;
- (g) A list of the skills the worker will acquire through retraining;
- (h) A description of the services that will be provided prior to completion of the plan that will assist the worker to successfully transition to gainful employment;
- (i) Any other information that may significantly affect the plan; and
- (j) An accountability agreement signed by the vocational rehabilitation provider and worker that:

(i) Acknowledges that the vocational rehabilitation provider and the worker have reviewed, understand and agree to the vocational rehabilitation plan;

(ii) Sets forth the vocational rehabilitation provider's and worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan;

(iii) Details expectations regarding progress, attendance, and other factors influencing completion of the plan; and

(iv) Acknowledges the worker understands that failure to comply with the agreed expectation will result in initiation of the process to suspend benefits in accordance with RCW 51.32.110 and WAC 296-14-410.

The vocational rehabilitation provider must use a statement approved by, or substantially similar to a statement used by, the department in order to document this agreement.

(2) **Closing report.** If the vocational rehabilitation provider has to stop plan development before a rehabilitation plan is approved, the vocational rehabilitation provider must submit a plan development closing report. The report must include:

(a) A list of the reasons the vocational rehabilitation provider cannot proceed with vocational rehabilitation plan development activities;

(b) Supporting documentation, such as: The goals that were researched, the job analyses that were developed, and/or labor market research as defined by WAC 296-19A-140 that was conducted; and

(c) An assessment addressing whether further vocational rehabilitation services may be necessary and likely to enable the worker to become employable.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-130 What are the requirements for a forensic evaluation? (1) A forensic evaluation constitutes an analysis of prior vocational services and the medical conditions of an injured worker, including pre and post injury, to determine whether any further vocational services are necessary and likely to enable the injured worker to become employable at gainful employment. Services that may be conducted in order to make a recommendation to the department may include, but are not limited to:

(a) Reviewing medical and vocational records;

(b) Obtaining, clarifying, and/or evaluating an industrially injured or ill worker's:

(i) Work and/or education history;

(ii) Skills, knowledge and aptitudes;

(iii) Physical capacities information related to the injury or other medical conditions;

(c) Identifying barriers to employment and possibilities for resolving the barriers;

(d) Identifying potential training needs and resources;

(e) Performing recommended services as needed to make a recommendation. These services may include conducting and writing job analyses, conducting labor market surveys, performing transferable skills analysis and performing occupational research.

(2) Recommendations must address the return to work priorities in RCW 51.32.095(~~(+2+)~~) (3) and be documented by providing evidence of previous services and/or services performed under this referral.

(3) Development of a vocational rehabilitation plan is specifically precluded during a forensic evaluation.

(4) Any vocational provider that has provided any vocational rehabilitation services to the industrially injured or ill worker may not receive a referral for a forensic evaluation of that industrially injured or ill worker. Any vocational provider who begins a forensic evaluation cannot receive further vocational referrals for that worker.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-190 How much is available for job modification assistance? An amount not to exceed (~~(five thousand dollars)~~) \$10,000 from the department is available per worker per job or job site. If combined with prejob accommodations for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is (~~(five thousand dollars)~~) \$10,000. The employer may add to this amount with its own contribution.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-191 When may the department authorize prejob accommodations? As provided for in RCW 51.32.095(~~(+4+)~~) (7), the supervisor or the supervisor's designee, in his or her discretion, may authorize prejob accommodations when the following criteria are met:

(1) The claim is open or in statutory pension status; and

(2) The injured worker's attending doctor certifies that the prejob accommodations are medically necessary due to the effects of the accepted industrial condition; and

(3) The prejob accommodation is medically necessary to enable the industrially injured or ill worker to:

(a) Participate in an approved retraining program; or

(b) Perform the essential functions of a job or a return to work goal in which the worker is seeking employment consistent with a completed retraining plan or the recommendations of an ability to work assessment; and

(4) No employer-employee relationship exists.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-192 How much is available for prejob accommodations? An amount not to exceed (~~(five thousand dollars)~~) \$10,000 from the department is available per worker per claim. If combined with job modifications for the same return to work goal, the maximum combined bene-

fit available for job modification and prejob accommodation is ((five thousand dollars)) \$10,000.

AMENDATORY SECTION (Amending WSR 09-24-108, filed 12/2/09, effective 1/2/10)

WAC 296-19A-570 What factors will the department consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured workers? The department will consider all of the information received from the training provider in its application for a provider number, including documents provided pursuant to WAC 296-19A-560. The department will review this information to ensure that the training provider provides services that are consistent with chapter 296-19A WAC and RCW ((51.32.099)) 51.32.096. Furthermore, the department will consider the following factors:

(1) Whether the training provider adequately supervises its instructors to ensure that they are qualified and provide appropriate training and instruction.

(2) Whether any students have been injured as a result of the training provider's failure to use adequate safety protocols.

(3) Whether any complaints have been filed by current or former students against the training provider or any of its instructors, and, if so, whether any of these complaints have merit.

(4) Whether the training provider or any of its instructors have ever been convicted of a crime, and, if so, the nature of the crime.

(5) Whether there is any other information indicating the training provider does not provide services to its students in a manner consistent with the objectives of chapter 296-19A WAC or RCW ((51.32.099)) 51.32.096.

(6) In addition training providers preparing students for employment must address the following factors:

(a) Whether any of the training provider's programs allow a student to obtain an educational or occupational credential awarded upon successful completion of program, and, if so, the type of credential(s) awarded;

(b) Whether any of the training provider's programs have clearly identified program objectives, such as information regarding specific job titles the student will qualify for on completion of training, and the projected wages and benefits of those jobs;

(c) Training provider's job placement rate, including job title, wages, and benefits obtained by graduates; and

(d) Whether the program achieved at least a ((thirty)) 30 percent completion rate and a ((fifty)) 50 percent job placement rate in the three quarters following graduation for the most recent fiscal year.

AMENDATORY SECTION (Amending WSR 17-19-089, filed 9/19/17, effective 10/20/17)

WAC 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1? No. The worker cannot elect Option 1 after the department has issued the order confirming the worker's Option 2 election. Exception: A worker may elect Option 1 when the Option 2 election has been rescinded as provided by RCW 51.32.096 ((+4)) (5)(b).

WSR 24-20-117

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed October 1, 2024, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-076.

Title of Rule and Other Identifying Information: WAC 182-52-0050 Prescription drug affordability board—Data and confidentiality and 182-52-0095 Prescription drug affordability board—Upper payment limits—Public comment.

Hearing Location(s): On November 5, 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_yD-r9EuYSnSoSXRf38FcTQ. 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: November 6, 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 October 2, 2024, 8:00 a.m., by November 5, 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 October 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to add language about data sharing between the prescription drug affordability board and the health care cost transparency board to align with language in RCW 70.390.050 (revised under ESHB 1508, section 2 (2) (a), chapter 80, Laws of 2024). Additionally, HCA is adding a new section regarding a time frame of 30 days for public comment prior to the board setting an upper payment limit to align with RCW 42.30.250 (new section created by SHB 1105, section 1(1), chapter 171, Laws of 2024).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 70.390.050 (ESHB 1508, section 2 (2) (a), chapter 80, Laws of 2024); RCW 42.30.250 (SHB 1105, section 1(1), chapter 171, Laws of 2024).

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: Mike Neuenschwander, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0944.

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(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:
Is fully exempt.

October 1, 2024
Wendy Barcus
Rules Coordinator

OTS-5831.1

AMENDATORY SECTION (Amending WSR 24-02-078, filed 1/2/24, effective 6/10/24)

WAC 182-52-0050 Prescription drug affordability board—Data and confidentiality. (1) For the purpose of reviewing drug prices and conducting affordability reviews, the board (as established in chapter 70.405 RCW) and the health care cost transparency board (established in chapter 70.390 RCW) may share data with each other and access all data collected under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority.

(2) Advisory group members may not access or review any confidential information.

(3) The information collected by the board pursuant to RCW 70.405.040 is not subject to public disclosure under chapter 42.56 RCW.

(4) The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

(5) Data recipients must keep data confidential by:

(a) Accessing, using, and disclosing information only in accordance with this section and consistent with applicable statutes, regulations, and policies;

(b) Having a public policy purpose to access and use the confidential information according to chapter 70.405 RCW;

(c) Protecting all confidential information against unauthorized use, access, disclosure, or loss by employing reasonable security measures in alignment with the agency information system security plan, including physically securing any computers, documents, or other media containing confidential information and viewing confidential information only on secure workstations in nonpublic areas;

(d) Destroying all confidential information according to document retention requirements;

(e) Adhering to the confidentiality requirements in this section after the data recipient is no longer an authorized data recipient under chapter 70.405 RCW; and

(f) Acknowledging that the data recipient may be responsible for liability arising from misuse of the data.

(6) Data recipients must not:

(a) Disclose any confidential information, as defined by WAC 182-52-0010, or otherwise publicly release the confidential information;

(b) Use or disclose any confidential information for any commercial or personal purpose, or any other purpose that is not authorized in chapter 70.405 RCW;

(c) Attempt to identify people who are the subject of the confidential information;

(d) Discuss confidential information in public spaces in a manner in which unauthorized individuals could overhear;

(e) Discuss confidential information with unauthorized individuals, including spouses, domestic partners, family members, or friends;

(f) Have any conflicts of interests under the Ethics in Public Service Act that would prevent the data recipient from accessing or using confidential information; and

(g) Share information received according to this chapter with any person who is not authorized to receive confidential information as specified by this chapter.

OTS-5830.1

NEW SECTION

WAC 182-52-0095 Prescription drug affordability board—Upper payment limits—Public comment. The board must allow 30 calendar days for the submission of public comment before setting an upper payment limit. Prior to the 30-day comment period, the authority will notify the public of both the beginning and ending dates that written comment will be accepted.

WSR 24-20-119
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 1, 2024, 12:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-010.

Title of Rule and Other Identifying Information: WAC 392-123-120

Statement of financial condition—Financial position of the school district.

Hearing Location(s): On December 11, 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: December 13, 2024.

Submit Written Comments to: Paul Stone, OSPI, P.O. Box 47200, Olympia, WA 98504, email paul.stone@k12.wa.us, beginning October 16, 2024, 8:00 a.m., by December 11, 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 December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing rule making to allow for potential binding conditions to be placed upon a school district or a charter school when the board of directors of a school district or a charter school board provides the superintendent of public instruction with an annual statement of financial condition (i.e., state Form F-196), and the reported information shows that a deficient general fund balance is reasonably foreseeable and likely. The rule amendments would allow the superintendent to hold school districts and charter schools that have an actual year-end negative fund balance to the same state monitoring and oversight process as the school districts and charter schools that have a budgeted negative year-end fund balance, because an actual negative year-end fund balance is a greater indicator of financial insolvency than a projected negative year-end fund balance.

Reasons Supporting Proposal: The proposed rule change would allow OSPI to hold school districts and charters to the same state monitoring and oversight process as those that have a projected negative year-end balance, since a school district or charter school's reported actual negative year-end fund balance is a more significant sign of financial insolvency compared to a budgeted negative year-end fund balance.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.505.140, 28A.710.040, 28A.710.220.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Stone, 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.

October 1, 2024

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-5901.1

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

WAC 392-123-120 Statement of financial condition—Financial position of the school district. The administration of each school district and charter school shall be required to provide the board of directors of the district or charter school board with a statement of financial condition monthly. The "statement of revenues, expenditures and changes in fund balance" in state Form F-196, is an example of the type of format and level of information necessary for this report.

Subject to timely reporting requirements in chapter 392-117 WAC, the district board of directors or charter school board shall be required to provide the superintendent of public instruction with an annual statement of financial condition in the format of state Form F-196. The data will be used by the superintendent to determine whether it is reasonably foreseeable and likely that the district will have to report a deficit general fund balance. Per RCW 28A.315.025, a deficit general fund balance is an indicator of financial insolvency and subjects the district or charter school to potential conditions which would become binding upon the district or charter school.

WSR 24-20-121
PROPOSED RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed October 1, 2024, 1:58 p.m.]

Supplemental Notice to WSR 24-17-071.

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 November 12 and November 21, 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: January 14, 2025.

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 October 16, 2024, at 9:00 a.m., by November 8, 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 November 8, 2024.

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.

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.

October 1, 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 24-20-122
PROPOSED RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed October 1, 2024, 2:00 p.m.]

Supplemental Notice to WSR 24-17-072.

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 November 12 and November 21, 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: January 14, 2025.

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 October 16, 2024, at 9:00 a.m., by November 8,
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 November 8, 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.

October 1, 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 24-20-127
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed October 1, 2024, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-069.

Title of Rule and Other Identifying Information: Chapter 196-26A WAC, Registered professional engineers and land surveyor fees; and chapter 196-30 WAC, Fees for on-site wastewater treatment designers and inspectors.

Hearing Location(s): On November 6, 2024, at 12:30 p.m., at the Board of Registration for Professional Engineers and Land Surveyors (BRPELS) Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or WebEx meeting. The public may also virtually participate in the hearing by accessing the hearing link on BRPELS's rule-making page <https://brpels.wa.gov/current-laws-and-rules/rulemaking-activity>.

Date of Intended Adoption: November 7, 2024.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia WA 98507-9025, email shanan.gillespie@brpels.wa.gov, beginning October 2, 2024, 12:01 a.m., by November 6, 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 November 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 18.43.150 and 18.210.200 requires BRPELS to "set fees at a level adequate to pay the costs of administering this chapter." Fee increases are needed to mitigate the risk of fund balance depletion due to expenses exceeding revenues. Further, the fee increase is moderate and should minimize the risk of over collecting revenues.

Reasons Supporting Proposal: It has been over 20 years since fees have been raised for engineers and land surveyors, and over 17 years since fees were raised for on-site septic designers. Fee increases are needed to mitigate the risk of fund balance depletion due to expenses exceeding revenues.

Statutory Authority for Adoption: RCW 18.43.035, 18.43.150, 18.210.050, 18.210.060, and 18.210.200.

Statute Being Implemented: RCW 18.43.050, 18.43.080, 18.43.130, 18.210.120, 18.210.140, and 18.210.190.

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

Name of Proponent: BRPELS, 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, 360-664-1575.

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. BRPELS 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 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 following sections of rule are exempt per RCW 34.05.310 (4) (f) because fees are being adjusted: WAC 196-26A-025, 196-26A-045, and 196-26A-060.

Scope of exemption for rule proposal:

Is fully exempt.

October 1, 2024
 Ken Fuller
 Director

OTS-5774.3

**Chapter 196-26A WAC
 ((REGISTERED PROFESSIONAL ENGINEERS AND LAND SURVEYOR)) FEES**

AMENDATORY SECTION (Amending WSR 14-03-029, filed 1/8/14, effective 2/8/14)

WAC 196-26A-025 State application fees ((for examinations)).

((FUNDAMENTAL EXAMINATIONS:))

Fundamentals of Engineering (FE):

Application fee (incl. wall certificate): \$30

Processing fee to retake the FE examination: \$20

Fundamentals of Land Surveying (FLS):

Application fee (incl. wall certificate): \$30

Processing fee to retake the FLS examination: \$20

Note: Additional charges to cover costs of NCEES fundamentals examinations, exam administration and grading will be charged by NCEES to approved applicants.

PROFESSIONAL ENGINEERING EXAMINATIONS:

NCEES Examinations: (All branches other than board prepared examinations)

Application fee (incl. wall certificate and initial license): \$65

Processing fee to retake the NCEES PE exam: \$30

Note: Additional charges to cover costs of NCEES PE examinations, exam administration and grading will be charged by NCEES to approved applicants.

Structural Engineering:

Note: To become licensed in structural engineering an applicant is required to pass sixteen hours of structural examinations when determined eligible under Washington law. The examinations for structural licensing consist of the NCEES 16-hour structural examination.

Application fee (incl. wall certificate and initial license): \$65

Processing fee to retake the NCEES 16-hour structural exam: \$30

Note: Additional charges to cover costs of NCEES 16-hour structural examination, exam administration and grading will be charged by NCEES to approved applicants.

PROFESSIONAL LAND SURVEYING:

Note: The examinations for licensure in professional land surveying include an NCEES PPLS examination, and a Washington specific examination. One application is required and when determined eligible a candidate will sit for the NCEES PPLS examination and the Washington specific examination on the same day.

Application fee (incl. wall certificate, state exams, and initial license): \$140

Processing and examination fee to retake the state PLS exam: \$100

Note: Additional charges to cover costs of NCEES LS examination, exam administration and grading will be charged by NCEES to approved applicants.

Processing fee to retake the NCEES PPLS examination: \$30))

FUNDAMENTALS CERTIFICATIONS:

Fundamentals of Engineering (FE):

Application fee (including wall certificate): \$30

Fundamentals of Land Surveying (FLS):

Application fee (including wall certificate): \$30

PROFESSIONAL ENGINEERING APPLICATIONS:

Exam and initial license application fee (including wall certificate and initial license): \$65

Comity licensure application fee (including wall certificate and initial license): \$110

Structural Engineering:

Exam application fee (including wall certificate and initial license): \$65

Comity application fee (including wall certificate): \$110

Temporary Permits:

Temporary permit application \$110

PROFESSIONAL LAND SURVEYING:

Additional charges to cover costs of NCEES PLS examination will be charged by NCEES to approved applicants.

<u>Application fee for exam and comity (including wall certificate, initial state exam, and initial license):</u>	<u>\$140</u>
<u>Processing and examination fee to retake the state PLS exam:</u>	<u>\$100</u>
 <u>ON-SITE WASTEWATER TREATMENT SYSTEM DESIGNERS:</u>	
<u>Application fee (including wall certificate, initial state exam, and initial license):</u>	<u>\$200</u>
<u>Processing and examination fee to retake the on-site designer exam:</u>	<u>\$140</u>
 <u>CERTIFICATE OF COMPETENCY (INSPECTOR):</u>	
<u>Application fee (including wall certificate, initial state exam, and initial license):</u>	<u>\$175</u>
<u>Processing and examination fee to retake the on-site designer exam:</u>	<u>\$140</u>

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-045 ((Professional engineer, professional land surveyor)) Renewal fees and penalties.

Professional engineer ((two years)) :	(\$116) <u>\$128</u>
Professional land surveyor ((two years)) :	(\$116) <u>\$128</u>
<u>On-site wastewater system designer:</u>	<u>\$128</u>
<u>Certificate of competency:</u>	<u>\$128</u>
Late renewal penalty ((PE and LS only)) :	(\$58) <u>\$64</u>

AMENDATORY SECTION (Amending WSR 02-13-080, filed 6/17/02, effective 9/1/02)

WAC 196-26A-060 Certificate of authorization application and renewal fees.

Application fee (incl. wall certificate and initial license):	\$150
Renewal fee (one-year):	(\$110) <u>\$121</u>

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 196-26A-035	State fees for comity licensure and temporary permit applications.
WAC 196-26A-100	Suspended fees.

OTS-5775.2

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-30-020	On-site wastewater treatment designer and inspector fees.
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WSR 24-20-128
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed October 1, 2024, 3:10 p.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 24-16-070.

Title of Rule and Other Identifying Information: Chapter 196-09 WAC, Board practices and procedures; and chapter 196-23 WAC, Stamping and seals; WAC 196-33-400 Seals and stamps, and 196-34-115 Qualifying activities.

Hearing Location(s): On November 20, 2024, at 12:30 p.m., at the Board of Registration for Professional Engineers and Land Surveyors (BRPELS) Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or WebEx meeting. The public may also virtually participate in the hearing by accessing the hearing link on BRPELS's rule-making page <https://brpels.wa.gov/current-laws-and-rules/rulemaking-activity>.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email shanan.gillespie@brpels.wa.gov, beginning October 2, 2024, 12:01 a.m., by November 20, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Mackenzie Wherrett, phone 360-664-1568, TTY 711, email Mackenzie.wherrett@brpels.wa.gov, by November 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A petition was received requesting BRPELS amend pronoun usage throughout Title 196 WAC. The pronouns (he/she, him/her, himself/herself) were amended to be inclusive, modern, and grammatically correct (they, them, themselves). This proposal was originally filed using the expedited rule-making process; however, BRPELS received several objections to the process.

Reasons Supporting Proposal: These changes are minor, without changing the effect of the rules, and they support BRPELS's interest in being compliant with state inclusion policies.

Statutory Authority for Adoption: RCW 18.43.035, 18.210.050, and 18.210.060.

Statute Being Implemented: Chapters 18.43 and 18.210 RCW.

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

Name of Proponent: Skye Theriot, private.

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, 360-664-1575.

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. BRPELS 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 only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: RCW 34.05.310 (4)(d) applies because amendments clarify language without changing its effect: Chapters 196-09 and 196-23 WAC; WAC 196-33-400 and 196-34-115 Qualifying activities.

Scope of exemption for rule proposal:
Is fully exempt.

October 1, 2024
Ken Fuller
Director

OTS-5697.1

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-130 Board member limitations—Contract selection.

(1) When a member of the board of registration for professional engineers and land surveyors (board) is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the board in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member must:

- (a) Exclude (~~((him or herself))~~) themselves from the board discussion regarding the specific contract, sale, lease, purchase or grant;
 - (b) Exclude (~~((him or herself))~~) themselves from the board vote on the specific contract, sale, lease, purchase or grant; and
 - (c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.
- (2) The prohibition against discussion set forth in sections (a) and (c) may not prohibit the member of the board from using (~~((his or her))~~) their general expertise to educate and provide general information on the subject area to the other members.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-131 Board member limitations—Board actions. (1)

When a member of the board of registration for professional engineers and land surveyors (Board) either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual, which is subject to a board action, the member must:

- (a) Recuse (~~((him or herself))~~) themselves from the board discussion regarding the specific action;
- (b) Recuse (~~((him or herself))~~) themselves from the board vote on the specific action; and
- (c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific action.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) may not prohibit the member of the board from using (~~his or her~~) their general expertise to educate and provide general information on the subject area to the other members.

(3) "Board action" may include any of the following:

- (a) An investigation or adjudicative proceeding;
- (b) Application or submission;
- (c) Request for a ruling or other determination decision, finding, ruling, or order; or
- (d) Monetary grant, payment, or award.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-135 Reporting of board member recusal. If exclusion or recusal occurs pursuant to WAC 196-09-130 or 196-09-131, the member of the board should disclose to the public the reasons for (~~his or her~~) their exclusion or recusal from any board action whenever it occurs. The board staff should record each instance of exclusion or recusal and the basis for it in the minutes of the board meetings.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-150 Public records. All public records of the board are available for public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) Inspection of records. Public records are available for inspection and copying during normal business hours of the office of the Washington state board of registration for professional engineers and land surveyors. Records may be inspected at the board's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(2) Records index. An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the board's office.

(3) Organization of records. The board maintains its records in a reasonably organized manner. The board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the board's office. A variety of records are also available on the board's website at <https://brpels.wa.gov/>. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request using the board's public records request form available on the board's website or in writing by letter or email addressed to the public records officer. Written request must include the following information:

(i) Date of the request.

(ii) Name of the requestor.

(iii) Address of the requestor and other contact information, including telephone number and any email addresses.

(iv) Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer may also accept requests for public records by telephone or in person. If the public records officer or designee accepts an oral or telephone request, (~~he or she~~) they will confirm receipt of the request and the details of the records requested, in writing, to the requestor.

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, (~~he or she~~) they should make that preference clear in the request. Copies will be made by the board's public records officer or designee.

(e) When fulfilling public records requests, the board will perform its public records responsibilities in the most expeditious manner consistent with the board's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a redaction log that includes the specific exemption, a brief explanation of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the board's anticipated installment delivery timetable.

(h) In certain instances, the board may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within (~~fifteen~~) 15 days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the (~~fifteen~~) 15-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations: In order to obtain a list of individuals under the provisions of RCW 42.56.070(8), educational organizations and professional associations must provide sufficient information to satisfy the board that the requested list of individuals is primarily for educational and professionally related uses.

Board forms are available on the board's website or upon request.

OTS-5698.1

AMENDATORY SECTION (Amending WSR 08-10-009, filed 4/24/08, effective 7/1/08)

WAC 196-23-010 Seals. All individuals licensed in accordance with chapter 18.43 RCW must utilize a seal/stamp that conforms to the design as authorized by the board. It is the responsibility of the licensee to maintain control over the use of ((his/her)) their stamp/seal. The impression or image of the seal/stamp must conform to the below-illustrated design and be of a size that assures full legibility of the following required information:

- (1) State of Washington;
- (2) Registered professional engineer or registered professional land surveyor;
- (3) Certificate number;
- (4) Licensee's name as shown on wall certificate.



AMENDATORY SECTION (Amending WSR 06-22-035, filed 10/25/06, effective 11/25/06)

WAC 196-23-040 Use of the title S.E. Only professional engineers who have completed the state of Washington's requirements for licensure in structural engineering are permitted to use the title of S.E. when representing ((his or her)) their licensing credential, as in, *James Smith, P.E., S.E.* Use of the title S.E. by any individual who is not licensed in structural engineering as provided in chapter 18.43 RCW, is subject to disciplinary action by the board in accordance with chapter 18.43 RCW and/or chapter 18.235 RCW.

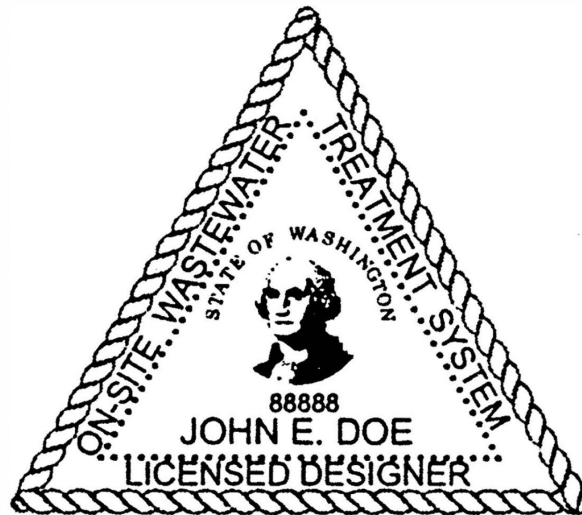
OTS-5699.1

AMENDATORY SECTION (Amending WSR 18-22-076, filed 11/2/18, effective 12/3/18)

WAC 196-33-400 Seals and stamps. All individuals licensed in accordance with chapter 18.210 RCW shall procure a seal/stamp that conforms to the design as authorized by the board. It is the responsibility of the licensee to maintain control over the use of ((his/her))

their stamp/seal. The impression or image of the seal/stamp shall conform to the below-illustrated design and be of a size that assures full legibility of the following required information:

- (1) State of Washington;
- (2) Licensed on-site wastewater treatment system designer;
- (3) License number;
- (4) Licensee's name as shown on license.



OTS-5700.1

AMENDATORY SECTION (Amending WSR 12-09-008, filed 4/5/12, effective 5/6/12)

WAC 196-34-115 Qualifying activities. The board believes that designers under provisions of chapter 18.210 RCW should have the discretion to make independent choices on what activities help them to be improved practitioners. The board will not provide advance approvals for selected activities or vendors. The board expects designers to seek out qualifying activities that can be demonstrated to the board as relevant to ((his or her)) their professional development as a designer.

WSR 24-20-129
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Nursing)
[Filed October 1, 2024, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-022.

Title of Rule and Other Identifying Information: Education requirements for advanced registered nurse practitioner (ARNP) licensure, amending WAC 246-840-010, 246-840-340, and 246-840-342. The Washington state board of nursing (board) is proposing amendments to education requirements for ARNP licensure in response to the joint administrative rules review committee's (JARRC) recommendation.

Hearing Location(s): On November 8, 2024, 1:15 p.m., at the Department of Health, Town Center 2, Room 167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone [https://us02web.zoom.us/meeting/register/tZUodOigpzgoE9dGJQW-Uz8UWiZz5N2_LIMk](https://us02web.zoom.us/join/https://us02web.zoom.us/meeting/register/tZUodOigpzgoE9dGJQW-Uz8UWiZz5N2_LIMk). After registering, you will receive a confirmation email containing information about joining the webinar. The public hearing will be hybrid. Participants can attend at the physical location or virtually by registering on Zoom.

Date of Intended Adoption: November 8, 2024.

Submit Written Comments to: Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-4738, beginning the date and time of this filing, by November 6, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Jessilyn Dagum, phone 360-236-3538, fax 360-236-4738, TTY 711, email WABONRules@doh.wa.gov, by November 6, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On July 5, 2023, JARRC found by a majority vote that by not defining "graduate degree" in rule, and by authorizing exemptions to WAC 246-840-340 and 246-840-342 by agency procedure, the board is using a policy in place of a rule that has not been adopted in accordance with all applicable provisions of law. JARRC recommended that the board define "graduate degree" and provide for the exemptions in board procedures by rule.

The proposed amendments to WAC 246-840-010, 246-840-340, and 246-840-342 address JARRC's recommendation by defining the term "graduate degree" and providing for exemptions to education requirements for ARNP licensure in rule.

Proposed amendments to WAC 246-840-010 define the term "graduate degree" as a master's or doctoral degree and amendments to WAC 246-840-342 (1)(b) provide for exemptions to education requirements for ARNP licensure as outlined in board procedure B09.06 (II).

Reasons Supporting Proposal: The proposed amendments are needed to address the findings of JARRC, which recommended the board define "graduate degree" and codify exemptions to education requirements in the rules. By doing so, the board will ensure transparency and compliance with legal standards.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, 18.79.160, and 18.79.250.

Statute Being Implemented: RCW 18.79.010, 18.79.110, 18.79.160, and 18.79.250.

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

Name of Proponent: Washington state board of nursing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jessilyn Dagum, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-3538; Enforcement: Mary Sue Gorski, 111 Israel Road S.E., Tumwater, WA 98504, 360-915-3334.

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 Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email WABONRules@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 amend provider licensure requirements and do not affect businesses.

Scope of exemption for rule proposal:

Is fully exempt.

October 1, 2024

Alison Bradywood DNP, MN/MPH, RN, NEA-BC
Executive Director
Washington State Board of Nursing

OTS-5616.4

AMENDATORY SECTION (Amending WSR 22-17-144, filed 8/23/22, effective 9/23/22)

WAC 246-840-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced clinical practice" means practicing at an advanced level of nursing in a clinical setting performing direct patient care.

(2) "Advanced nursing practice" means the delivery of nursing care at an advanced level of independent nursing practice that maximizes the use of graduate educational preparation, and in-depth nursing knowledge and expertise in such roles as autonomous clinical practitioner, professional and clinical leader, expert practitioner, and researcher.

(3) "Advanced registered nurse practitioner (ARNP)" is a registered nurse (RN) as defined in RCW 18.79.050, 18.79.240, 18.79.250, and 18.79.400 who has obtained formal graduate education and national specialty certification through a ((commission)) board approved certifying body in one or more of the designations described in WAC 246-840-302, and who is licensed as an ARNP as described in WAC 246-840-300. The designations include the following:

- (a) Nurse practitioner (NP);
- (b) Certified nurse midwife (CNM);
- (c) Certified registered nurse anesthetist (CRNA); and

(d) Clinical nurse specialist (CNS).

(4) "Associate degree registered nursing education program" means a nursing education program which, upon successful completion of course work, that includes general education and core nursing courses that provide a sound theoretical base combining clinical experiences with theory, nursing principles, critical thinking, and interactive skills, awards an associate degree in nursing (ADN) to prepare its graduates for initial licensure and entry level practice as an RN.

(5) "Bachelor of science degree registered nursing education program" means a nursing education program which, upon successful completion of course work taught in an associate degree nursing education program, as defined in subsection ~~((28))~~ (29) of this section, plus additional courses physical and social sciences, nursing research, public and community health, nursing management, care coordination, and the humanities, awards a bachelor of science in nursing (BSN) degree, to prepare its graduates for a broader scope of practice, enhances professional development, and provides the nurse with an understanding of the cultural, political, economic, and social issues that affect patients and influence health care delivery.

(6) "Board" means the Washington state board of nursing.

(7) "Certifying body" means a nongovernmental agency using predetermined standards of nursing practice to validate an individual nurse's qualifications, knowledge, and practice in a defined functional or clinical area of nursing.

~~((7))~~ (8) "Client advocate" means a licensed nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and choices by providing the client with adequate information about their care and options.

~~((8) "Commission" means the Washington state nursing care quality assurance commission.)~~

(9) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(10) "Conditional approval" is the approval given a nursing education program that has not met the requirements of the law and the rules of the ~~((commission))~~ board. Conditions are specified that must be met within a designated time to rectify the deficiency.

(11) "Dedicated education unit" means a clinical learning experience within a health care facility, as part of the curriculum of a nursing education program.

(12) "Delegation" means the licensed nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The nurse delegating the task is responsible and accountable for the nursing care of the client. The nurse delegating the task supervises the performance of the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(13) "Distance education" or "distance learning" means instruction offered by any means where the student and faculty are in separate physical locations. Teaching methods may be synchronous, where the teacher and student communicate at the same time, or asynchronous, where the student and teacher communicate at different times, and shall facilitate and evaluate learning in compliance with nursing education rules.

(14) "Full approval" of a nursing education program is the approval signifying that a nursing program meets the requirements of the law and the rules of the ~~((commission))~~ board.

(15) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own; receipt of the examination results after 30 days after the nurse technician's date of graduation; or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(16) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program or licensed practical nursing program approved by the ~~((commission))~~ board and is successfully meeting all program requirements.

(17) "Graduate degree" means a master's or doctoral degree.

(18) "Health care professional" means the same as "health care provider" as defined in RCW 70.02.010(18).

~~((18))~~ (19) "Home state" is defined as where the nursing education program has legal domicile.

~~((19))~~ (20) "Host state" is defined as the state jurisdiction outside the home state where a student participates in clinical experiences or didactic courses.

~~((20))~~ (21) "Immediately available" as applied to nursing technicians, means that an RN who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed which may include the use of two-way communication devices which allow conversation between the nursing technician and an RN who has agreed to act as supervisor.

(a) In a hospital setting, the RN who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, an RN who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

~~((21))~~ (22) "Initial approval" of nursing education program is the approval status conferred by the ~~((commission))~~ board to a new nursing program based on its proposal prior to the graduation of its first class.

~~((22))~~ (23) "Licensed practical nurse (LPN)" is a nurse licensed as defined in RCW 18.79.030(3), with a scope of practice defined in RCW 18.79.020 and 18.79.060.

~~((23))~~ (24) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a student through a ~~((commission))~~ board approved refresher course. This authorization does not permit practice for employment.

~~((24))~~ (25) "Minimum standards of competency" means the knowledge, skills, and abilities that are expected of the beginning practitioner.

~~((25))~~ (26) "National nursing education accreditation body" means an independent nonprofit entity, approved by the United States Department of Education as a body that evaluates and approves the quality of nursing education programs within the United States and territories.

~~((26))~~ (27) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching and learning component in clinical settings.

~~((27))~~ (28) "Nursing education program administrator" is an individual who has the authority and responsibility for the administration of the nursing education program.

~~((28))~~ (29) "Nursing education program" means a division or department within a state supported educational institution or other institution of higher learning, charged with the responsibility of preparing nursing students and nurses to qualify for initial licensing or higher levels of nursing practice.

~~((29))~~ (30) "Nursing faculty" means an individual employed by a nursing education program who is responsible for developing, implementing, evaluating, updating, and teaching nursing education program curricula.

~~((30))~~ (31) "Nursing technician" means a nursing student preparing for RN or LPN licensure who meets the qualifications for registration under RCW 18.79.340 who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic. Approved nursing education programs do not include nontraditional schools as defined in subsection ~~((26))~~ (27) of this section.

~~((31))~~ (32) "Philosophy" means the beliefs and principles upon which a nursing education program curriculum is based.

~~((32))~~ (33) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate or degree that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

~~((33))~~ (34) "Registered nurse" or "RN" is a licensed nurse as defined in RCW 18.79.030(1), 18.79.040, 18.79.240, and 18.79.260.

~~((34))~~ (35) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

~~((35))~~ (36) "Traditional nursing education program" means a program that has a curriculum which includes a faculty supervised teaching and learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-340 Initial ARNP requirements. (1) An applicant for licensure as an ARNP shall have the following qualifications:

(a) An active Washington state RN license, without sanctions or restrictions;

(b) A graduate degree from an advanced nursing education program accredited by a national nursing accreditation body recognized by the United States Department of Education;

(c) Certification from a certifying body as identified in WAC 246-840-302;

(d) Completion of advanced clinical practice hours, as defined in WAC 246-840-010(1) and in the role of an advanced practice nurse as defined in WAC 246-840-010(2), when applicable, in situations under subsection (3) of this section.

(2) An applicant for ARNP licensure shall submit:

(a) A completed ARNP application for licensure to the (~~commission~~) board;

(b) The license fee as specified in WAC 246-840-990;

(c) A request to the certifying body, as identified in WAC 246-840-302, to send official documentation of certification directly to the (~~commission~~) board;

(d) A request to the advanced nursing educational program to send an official transcript directly to the (~~commission~~) board showing courses, grades, degree or certificate granted, official seal, and appropriate registrar; and

(e) Program objectives and course descriptions when requested by the (~~commission~~) board.

(3) To be granted a license without meeting the advanced clinical practice requirements identified in subsection (4) of this section, the ARNP shall initiate the application process within one year of earning a graduate degree from an advanced nursing education program.

(4) An ARNP applicant who does not apply within one year of earning a graduate degree from an advanced nursing education program may be eligible to receive an ARNP interim permit for the purpose of completing (~~one hundred twenty-five~~) 125 hours of advanced clinical practice for every additional year following graduation, not to exceed (~~one thousand~~) 1,000 hours. The ARNP interim permit expires one year after the submission of the application.

(a) An ARNP applicant's clinical practice must be supervised by an ARNP under chapter 18.79 RCW, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, or equivalent licensure in another state or United States jurisdiction. The ARNP interim permit holder must complete supervised advanced clinical practice as defined in subsections (4) and (5) of this section.

(b) The supervisor must be in the same practice specialty in which the applicant is seeking licensure. The supervising ARNP or physician:

(i) Shall have an active ARNP or physician license, for two or more years, without sanctions or restrictions;

(ii) Must not be a member of the applicant's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the supervisor's duties to impartially supervise and evaluate the nurse;

(iii) Must not have current disciplinary action on their license;
 (iv) Shall submit documented evidence to the ~~((commission))~~ board verifying the applicant's successful completion of the required supervised clinical practice hours in an ARNP role.

(5) An ARNP applicant needing to complete supervised advanced clinical practice:

(a) Shall meet the requirements of subsection (1)(a) and (b) of this section;

(b) Shall indicate on the ARNP application the need for an interim permit; and

(c) Must obtain:

(i) ~~((commission))~~ Board approval of the supervising ARNP or physician; and

(ii) The interim permit.

(6) The nurse must use the designation interim ARNP at all times and on all documentation of the supervised clinical practice hours.

(7) An applicant holding an active RN license, without sanctions or restrictions; and current national certification as a CNS; and is practicing in Washington state in an advanced nursing role, will be exempt from the supervised practice requirement if they can provide evidence of ~~((two hundred fifty))~~ 250 hours of advanced clinical practice within the last two years.

AMENDATORY SECTION (Amending WSR 20-10-015, filed 4/24/20, effective 4/24/20)

WAC 246-840-342 Licensure for ARNP applicants by interstate endorsement. (1) An applicant for interstate endorsement for Washington state licensure as an ARNP shall meet the following requirements:

(a) Have an active RN and ARNP license, or recognition in another state or jurisdiction, as practicing in an advanced practice role, without sanctions or restrictions;

(b) Have a graduate degree from an advanced nursing education program as identified in WAC 246-840-340 (1)(b), unless the applicant has been practicing in another state, U.S. territory, or the District of Columbia (D.C.) as an ARNP and demonstrates that the following criteria have been met:

(i) Current advanced nursing practice, as defined in WAC 246-840-010(2), in the advanced role and population focus area;

(ii) National certification or recertification, in the advanced role and population focus area;

(iii) Compliance with the ARNP educational requirements of the board that were in effect at the time the ARNP completed their ARNP education program; and

(iv) Compliance with all other criteria for licensure set forth by the board; and

(c) Hold certification from a certifying body as identified in WAC 246-840-302(3).

(2) An applicant for an ARNP license through interstate endorsement shall:

(a) Apply for and be granted a Washington state RN license as identified in WAC 246-840-090;

(b) Submit a completed ARNP application for licensure to the ~~((commission))~~ board;

(c) Submit the license fee as specified in WAC 246-840-990;

(d) Request the certifying body, as identified in WAC 246-840-302, to send official documentation of certification directly to the (~~commission~~) board;

(e) Request the advanced nursing educational program to send an official transcript directly to the (~~commission~~) board showing courses, grades, degree or certificate granted, official seal and appropriate registrar; and

(f) Submit nursing education program objectives and course descriptions when requested by the (~~commission~~) board.

WSR 24-20-131
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed October 1, 2024, 4:01 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-01-072 Child, 357-01-172 Family members, and 357-31-130 When must an employer allow an employee to use their accrued sick leave?

Hearing Location(s): On November 14, 2024, at 8:30 a.m., via Zoom meeting (with call in option), <https://ofm-wa-gov.zoom.us/j/81889336350?pwd=TzYzY05oL3FrSW5UTnBEeEk5ODVvQT09>, ID 818 8933 6350; or call in 253-215-8782, Passcode 171240.

Date of Intended Adoption: November 21, 2024.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), 1500 Jefferson Street S.E., P.O. Box 47500, Olympia, WA 98504, email brandy.chinn@ofm.wa.gov, by 11:59 p.m., November 7, 2024.

Assistance for Persons with Disabilities: OFM, TTY 711 or 1-800-833-6384, by 11:59 p.m., November 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 357-01-072 expands the definition of child for the purpose of using accrued sick leave under WAC 357-31-130 to include a child's spouse or child's registered domestic partner. The proposed amendment to WAC 357-01-172 expands the definition of family member for the purpose of using accrued sick leave under WAC 357-31-130 to include any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. Family member does not include an individual who simply resides in the same home with no expectation that the employee care for the individual for the purposes of WAC 357-31-130. The proposed amendment to WAC 357-31-130(5) is to align with the changes made to RCW 49.46.210 (1)(b)(iii).

Reasons Supporting Proposal: To align the civil service rules (Title 357 WAC) with the requirements of the new law. ESSB 5793, chapter 356, Laws of 2024, passed during the 2024 legislative session, effective January 1, 2025. Section 1 of this bill amends RCW 49.46.210 (1)(b)(iii) to clarify an employee is authorized to use paid sick leave when the employee's place of business or an employee's child's school or place of care has been closed by order of a public official for any health-related reason or after the declaration of an emergency by a local or state government or agency, or federal government. Section 1 also amends RCW 49.46.210(2) to expand the definition of a family member to include any individual who regularly resides in the employee's home or where the relationship creates an expectation the employee cares for the person and that individual depends on the employee for care, except it does not include an individual who simply resides in the same home with no expectation the employee care for the individual. The definition of a child was also expanded to include a child's spouse and registered domestic partner. A policy decision was made to expand the definition of a family member for all sick leave reasons provided in WAC 357-31-130, not just limiting to ones included in RCW 49.46.210, and also apply these changes to both overtime-eligi-

ble and overtime-exempt employees to allow for equal treatment of all employees.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 49.46.210.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-878-2901.

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

A cost-benefit analysis is not required under RCW 34.05.328.

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328

(5) (b) (ii) for exemption.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

October 1, 2024

Nathan Sherrard

Assistant Legal Affairs Counsel

OTS-5862.2

AMENDATORY SECTION (Amending WSR 18-05-032, filed 2/10/18, effective 3/13/18)

WAC 357-01-072 Child. A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing *in loco parentis*, a child of a legal guardian, or a child of a de facto parent, regardless of age or dependency status. For the purpose of using accrued sick leave under WAC 357-31-130, child also includes a child's spouse or child's registered domestic partner.

AMENDATORY SECTION (Amending WSR 23-24-023, filed 11/28/23, effective 1/1/24)

WAC 357-01-172 Family members. (1) Individuals considered to be members of the family are parent, sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child.

(2) For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC, in addition to subsection (1) of this section, family member also includes a domestic partner as

defined in RCW 26.60.020 or a person with whom the employee has a dating relationship as defined in RCW 49.76.020.

(3) For the purpose of using accrued sick leave under WAC 357-31-130, in addition to subsection (1) of this section family member also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. Family member does not include an individual who simply resides in the same home with no expectation that the employee cares for the individual.

OTS-5863.1

AMENDATORY SECTION (Amending WSR 23-24-021, filed 11/28/23, effective 1/1/24)

WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

Employers **must** allow the use of accrued sick leave under the following conditions:

(1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(3) When a high-risk employee seeks an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such health-related reason, or after the declaration of an emergency by a local or state government or agency, or by the federal government.

(6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (6) of this section.

(a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

WSR 24-20-133
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2024-05—Filed October 1, 2024, 4:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-075.

Title of Rule and Other Identifying Information: Consolidated health care; implementation of SSB 5300 (2023-24), SB 5821 (2023-24), ESHB 1957 (2023-24), and other related legislation and laws incorporated as consolidated health care rule making.

Hearing Location(s): On Thursday, November 7, 2024, at 9:00 a.m., virtually via Zoom meetings, please see this website for the links and registration <https://www.insurance.wa.gov/consolidated-health-care-r-2024-05>. Written comments are due to the office of the insurance commissioner (OIC) by close of business (5 p.m. PST) on Friday, November 8, 2024. Written comments can be emailed to RulesCoordinator@oic.wa.gov.

Date of Intended Adoption: Monday, November 18, 2024.

Submit Written Comments to: Delika Steele, Health Policy Analyst, P.O. Box 40260, Olympia, WA 98504-0260, email RulesCoordinator@oic.wa.gov, fax 360-586-3109, beginning 8 a.m. PST on October 2, 2024, by close of business 5 p.m. PST on Friday, November 8, 2024.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by Thursday, November 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OIC is considering consolidated health care rule making due to the recent passage of insurance-related legislation and other changes in law. Multiple provisions of health care and insurance regulations in WAC may need to be updated by OIC to be consistent with the legislation passed and codified in RCW and recent federal law changes. These rules will facilitate implementation of the new laws by ensuring that all affected health care and insurance entities understand their legal rights and obligations under the enacted legislation.

Reasons Supporting Proposal: This rule making may include, but is not limited to, clarifying prescription drug coverage for behavioral health treatment; updating the definition of "established relationship" as applied to audio-only telemedicine services; and clarifying coverage and cost sharing requirements for preventive services. The rule making impacts the following authorities: WAC 284-170-130, 284-43-0120, 284-43-0160, 284-43-5080, 284-43-5110, 284-43-5642, 284-43-5800, and 284-43-5980.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.0961 (to effectuate chapter 325, Laws of 2023), 48.43.735 (to effectuate chapter 215, Laws of 2024), and 48.43.047 (to effectuate chapter 314, Laws of 2024).

Statute Being Implemented: Chapter 325, Laws of 2023; chapter 215, Laws of 2024; and chapter 314, Laws of 2024.

Rule is necessary because of federal law, 89 F.R. 37522.

Name of Proponent: OIC, governmental.

Name of Agency Personnel Responsible for Drafting: Delika Steele, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7260; Implementation: Ned Gaines, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7126; and

Enforcement: Kim Tocco, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7118.

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 Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email simon.casson@oic.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 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(c), 34.05.310 (4)(d), and 34.05.310 (4)(e).

Explanation of exemptions: The proposed rule language either adopts or incorporates by reference without material change from the state statutes, is explicitly dictated by statute, or adds clarifying language without changing the underlying effect of the regulation.

WAC 284-170-130 Definitions, the proposed rule amendments align existing rules with the law as established by chapter 215, Laws of 2024 and is exempt under RCW 34.05.328 (5)(b)(v), because proposed changes are dictated by statute without option.

WAC 284-43-0120 Applicability and scope, the proposed rule amendments add clarifying language without changing the underlying effect of the regulation and are exempt under RCW 34.05.328 (5)(b)(iv).

WAC 284-43-0160 Definitions, the proposed rule amendments align existing rules with the law as established by chapter 325, Laws of 2023 and are exempt under RCW 34.05.328 (5)(b)(v), because proposed changes are dictated by statute without option.

WAC 284-43-5080 Prescription drug benefit design, the proposed rule amendments align existing rules with the law as established by chapter 325, Laws of 2023 and are exempt under RCW 34.05.328 (5)(b)(v), because proposed changes are dictated by statute without option.

WAC 284-43-5110 Cost-sharing for prescription drugs, the proposed rule amendments align existing rules with the law as established by chapter 325, Laws of 2023 and are exempt under RCW 34.05.328 (5)(b)(v), because proposed changes are dictated by statute without option.

WAC 284-43-5642 Essential health benefit categories, the proposed rule amendments align existing rules with the law as established by chapter 314, Laws of 2024 and are exempt under RCW 34.05.328 (5)(b)(iii), as they incorporate existing federal rule and state statute by reference.

WAC 284-43-5800 Plan cost-sharing and benefit substitution and limitations, the proposed rule amendments align existing rules with

the law as established by chapter 325, Laws of 2023 and are exempt under RCW 34.05.328 (5) (b) (iii), as they incorporate existing statute by reference and RCW 34.05.328 (5) (b) (v) because proposed changes are dictated by statute without option.

WAC 284-43-5980 Notice requirement, the proposed rule amendments align existing rules with ACA section 1557 final rule and are exempt under RCW 34.05.328 (5) (b) (iii), as they incorporate existing federal rule by reference.

Scope of exemption for rule proposal:

Is fully exempt.

A copy of the detailed cost calculations may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@oic.wa.gov.

October 1, 2024

Mike Kreidler

Insurance Commissioner

OTS-5872.3

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-0120 Applicability and scope. (1) This chapter shall apply to all health plans and all health carriers subject to the jurisdiction of the state of Washington except as otherwise expressly provided in this chapter. Health carriers are responsible for compliance with the provisions of this chapter ((and)). A carrier's obligation to comply with the provisions of this chapter is nondelegable. Carriers are responsible for the compliance of any person, health care benefit manager, or other organization acting on behalf of or at the direction of the carrier, or acting pursuant to carrier standards or requirements concerning the coverage of, payment for, or provision of health care services.

(2) A carrier may not offer as a defense to a violation of any provision of this chapter that the violation arose from the act or omission of a participating provider or facility, network administrator, claims administrator, health care benefit manager, or other person acting on behalf of or at the direction of the carrier, or acting pursuant to carrier standards or requirements under a contract with the carrier rather than from the direct act or omission of the carrier. Nothing in this chapter shall be construed to permit the direct regulation of health care providers or facilities by the office of the insurance commissioner.

AMENDATORY SECTION (Amending WSR 23-24-034, filed 11/30/23, effective 1/1/24)

WAC 284-43-0160 Definitions. Except as defined in other sub-chapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

- (1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:
- (a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;
 - (b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;
 - (c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;
 - (d) A rescission of coverage determination; or
 - (e) A carrier's denial of an application for coverage.
- (2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.
- (3) "Behavioral health agency" means an agency licensed or certified under RCW 71.24.037.
- (4) "Clinical review criteria" means the written screens or screening procedures, decision rules, medical protocols, or clinical practice guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services, including prescription drug benefits, under the auspices of the applicable plan. Clinical approval criteria has the same meaning as clinical review criteria.
- (5) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.
- (6) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.
- (7) "Emergency fill" means a limited dispensed amount of medication that allows time for the processing of a preauthorization request. Emergency fill only applies to those circumstances where a patient presents at a contracted pharmacy with an immediate therapeutic need for a prescribed medication that requires a prior authorization.
- (8) "Emergency medical condition" has the meaning set forth in RCW 48.43.005.
- (9) "Emergency services" has the meaning set forth in RCW 48.43.005.
- (10) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.
- (11) "Expedited prior authorization request" has the meaning set forth in RCW 48.43.830.

(12) "Facility" means an institution providing health care services including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(13) "Formulary" means a listing of drugs used within a health plan. A formulary must include drugs covered under an enrollee's medical benefit.

(14) "Grievance" has the meaning set forth in RCW 48.43.005.

(15) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(16) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(17) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(18) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(19) "Immediate therapeutic needs" means those needs where passage of time without treatment would result in imminent emergency care, hospital admission or might seriously jeopardize the life or health of the patient or others in contact with the patient.

(20) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. §1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. §450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. §450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. §47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. §1603(29).

(21) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(22) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

(23) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(24) "Mental health services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization, residential treatment, out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize or ameliorate the effects of a mental disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association, including diagnoses and treatment for substance use disorder.

(25) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(26) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(27) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an

unincorporated organization, any similar entity, or any combination of the foregoing.

(28) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(29) "Predetermination request" means a voluntary request from an enrollee or provider or facility for a carrier or its designated or contracted representative to determine if a service is a benefit, in relation to the applicable plan.

(30) "Preservice requirement" means any requirement that a carrier places on a provider or facility that may limit their ability to deliver a service that requires prior authorization. Examples include limits on the type of provider or facility delivering the service, a service that must be provided before a specific service will be authorized, site of care/place of service, and whether a provider administered medication needs to be obtained from a specialty pharmacy.

(31) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(32) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(33) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(34) "Prior authorization" means a mandatory process that a carrier or its designated or contracted representative requires a provider or facility to follow to determine if a service is a benefit and meets the requirements for medical necessity, clinical appropriateness, level of care, or effectiveness in relation to the applicable plan. Prior authorization occurs before the service is delivered. For purposes of WAC 284-43-2050 and 284-43-2060, any term used by a carrier or its designated or contracted representative to describe this process is prior authorization. For example, prior authorization has also been referred to as "prospective review," "preauthorization," or "precertification."

(35) "Refill" means a second or subsequent filling of a previously issued prescription.

(36) "Serious mental illness" means a mental disorder, as defined in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association, that results in serious functional impairment that substantially interferes with or limits one or more major life activities.

(37) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

~~((36))~~ (38) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005~~((33))~~ comprising from one to 50 eligible employees.

~~((37))~~ (39) "Standard prior authorization request" has the meaning set forth in RCW 48.43.830.

~~((38))~~ (40) "Step therapy protocol" means a drug utilization management prior authorization protocol or program that establishes the specific sequence in which prescription drugs are covered by a health carrier for a medical condition.

~~((39))~~ (41) "Substance use disorder" means a substance-related or addictive disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association.

~~((40))~~ (42) "Substitute drug" means a prescription medication, drug or therapy that a carrier covers based on an exception request. When the exception request is based on therapeutic equivalence, a substitute drug means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

~~((41))~~ (43) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

~~((42))~~ (44) "Withdrawal management services" means 24 hour medically managed or medically monitored detoxification and assessment and treatment referral for adults or adolescents withdrawing from alcohol or drugs, which may include induction of medications for addiction recovery.

AMENDATORY SECTION (Amending WSR 22-23-070, filed 11/10/22, effective 12/11/22)

WAC 284-43-5080 Prescription drug benefit design. (1) Except as provided in subsection (2) of this section, a carrier may design its prescription drug benefit to include cost control measures, including requiring preferred drug substitution in a given therapeutic class, if the restriction is for a less expensive, equally therapeutic alternative product available to treat the condition.

(2) Beginning January 1, 2025, a carrier or its health care benefit manager may not require the substitution of a nonpreferred drug with a preferred drug in a given therapeutic class, or increase an enrollee's cost-sharing obligation mid-plan year for the drug, if:

(a) The prescription is for a refill of an antipsychotic, antidepressant, antiepileptic, or other drug prescribed to the enrollee to treat a serious mental illness;

(b) The enrollee is medically stable on the drug; and

(c) A participating provider continues to prescribe the drug.

(3) Nothing in subsection (2) of this section prohibits:

(a) A carrier from requiring generic substitution during the current plan year;

(b) A carrier from adding new drugs to its formulary during the current plan year;

(c) A carrier from removing a drug from its formulary for reasons of patient safety concerns, drug recall or removal from the market, or medical evidence indicating no therapeutic effect of the drug; or

(d) A participating provider from prescribing a different drug that is covered by the plan and medically appropriate for the enrollee.

(4) Except to the extent provided otherwise in subsection (2) of this section, a carrier may include elements in its prescription drug benefit design that, where clinically feasible, create incentives for the use of generic drugs. Examples of permitted incentives include, but are not limited to, refusal to pay for higher cost drugs until it can be shown that a lower cost drug or medication is not effective (also known as step therapy protocols or fail-first policies), establishing a preferred brand and nonpreferred brand formulary, or otherwise limiting the benefit to the use of a generic drug in lieu of brand name drugs, subject to a substitution process as set forth in subsection ~~((3))~~ (5) of this section.

~~((3))~~ (5) Except to the extent provided otherwise in subsection (2) of this section, a carrier may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over-the-counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.

~~((4))~~ (6) A carrier may require an enrollee to try an AB-rated generic equivalent or a biological product that is an interchangeable biological product prior to providing coverage for the equivalent branded prescription drug.

~~((5))~~ (7) A nongrandfathered health plan issued or renewed on or after January 1, 2023, that provides coverage for prescription drugs must comply with RCW 48.43.435.

(a) **For the purposes of this subsection**, any cost sharing amount paid directly by or on behalf of the enrollee by another person for a covered prescription drug, at the time it is rendered, must be applied in full toward the enrollee's applicable cost-sharing as defined in WAC 284-43-0160 and out-of-pocket maximum as defined in RCW 48.43.005 consistent with RCW 48.43.435.

(b) If an enrollee requests an exception under RCW 48.43.420 or appeals a denial of an exception request, and the request or appeal is still pending, any amount paid by or on behalf of an enrollee for a covered prescription drug must be applied towards the enrollee's contribution to any applicable deductible, copayment, coinsurance, or out-of-pocket maximum until the review is resolved and the status of the request is communicated to the carrier.

(c) The health carrier must disclose to the enrollee information about when third-party payments, including payments made through application of a manufacturer drug coupon or other manufacturer discount, are applied towards the enrollee's annual cost-sharing obligations, including applicable deductibles, copayments, coinsurances, or out-of-pocket maximums. The disclosure shall be included in the certificate of coverage (also commonly referred to as the member booklet or member handbook). Carriers are not required to use verbatim language from either the statute or regulation; however, the information provided to the enrollee about the application of third-party payments must be sufficiently detailed to address the situations set forth in RCW 48.43.435 ~~((1)(a)(i) through (iii))~~.

AMENDATORY SECTION (Amending WSR 17-03-087, filed 1/12/17, effective 2/12/17)

WAC 284-43-5110 Cost-sharing for prescription drugs. (1) A carrier and health plan unreasonably restrict the treatment of patients if an ancillary charge, in addition to the plan's normal copayment or coinsurance requirements, is imposed for a drug that is covered because of one of the circumstances set forth in either WAC 284-43-5080 or 284-43-5100. An ancillary charge means any payment required by a carrier that is in addition to or excess of cost-sharing explained in the policy or contract form as approved by the commissioner. Cost-sharing means amounts paid directly to a provider or pharmacy by an enrollee for services received under the health benefit plan, and includes copayment, coinsurance, or deductible amounts.

(2) Except to the extent provided otherwise WAC 284-43-5080, when an enrollee requests a brand name drug from the formulary in lieu of a therapeutically equivalent generic drug or a drug from a higher tier within a tiered formulary, and there is not a documented clinical basis for the substitution, a carrier may require the enrollee to pay for the difference in price between the drug that the formulary would have required, and the covered drug, in addition to the copayment. This charge must reflect the actual cost difference.

(3) When a carrier approves a substitution drug, whether or not the drug is in the carrier's formulary, the enrollee's cost-sharing for the substitution drug must be adjusted to reflect any discount agreements or other pricing adjustments for the drug that are available to a carrier. Any charge to the enrollee for a substitution drug must not increase the carrier's underwriting gain for the plan beyond the gain contribution calculated for the original formulary drug that is replaced by the substitution.

(4) Except to the extent provided otherwise in WAC 284-43-5080, if a carrier uses a tiered formulary in its prescription drug benefit design, and a substitute drug that is in the formulary is required based on one of the circumstances in either WAC 284-43-5080 or 284-43-5100, the enrollee's cost sharing may be based on the tier in which the carrier has placed the substitute drug.

(5) If a carrier requires cost-sharing for enrollees receiving an emergency fill as defined in WAC 284-170-470, then issuers must disclose that information to enrollees within their policy forms.

(6) For individual and small group plans, if a substitution is granted, the carrier must treat the drug as an essential health benefit, including by counting any cost-sharing towards the plan's annual limitation on cost-sharing and towards any deductible.

AMENDATORY SECTION (Amending WSR 20-24-040, filed 11/23/20, effective 12/24/20)

WAC 284-43-5642 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and outpatient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screening tests that are required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

(viii) Obesity or weight reduction or control other than:

(A) Covered nutritional counseling; and

(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as emergency medical services the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility;

(vii) Inpatient hospitalization where mental illness is the primary diagnosis.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(ii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

(iii) Reversal of sterilizations; and

(iv) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017. Health plans may not include the base-benchmark plan limitations listed below and must cover all services consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017, RCW 48.30.300, 48.43.0128, 48.43.072, 48.43.073, 49.60.040 and 49.60.178:

(i) The base-benchmark plan allows a waiting period for transplant services;

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services; and

(iii) The base-benchmark plan excludes coverage for hospitalization where mental illness or a substance use disorder is the primary diagnosis.

(d) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy coverage that is substantially equivalent to coverage for maternal care or services, as provided in RCW 48.43.073.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of*

Mental Disorders (DSM) published by the American Psychiatric Association, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include court-ordered mental health treatment that is not medically necessary as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purpo-

ses of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to (~~thirty~~) 30 day supplies at a time, other than insulin, which may be offered with more than a (~~thirty~~) 30 day supply. This limitation is a floor, and an issuer may permit supplies greater than (~~thirty~~) 30 days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(iv) Reproductive health-related over-the-counter drugs, devices, and products approved by the federal Food and Drug Administration.

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be sub-

stantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(iii) An issuer may include over-the-counter medications in its formulary for purposes of establishing quantitative limits and administering the benefit.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of medically necessary health care services and health care devices designed to assist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to (~~thirty~~) 30 service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to (~~twenty-five~~) 25 outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X-ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X-ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multidisciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii) (A) Screening and tests for which the U.S. Preventive Services Task Force (~~for Prevention and Chronic Care have~~) has issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in ((a)) the relevant recommendation or guideline, federal rules and guidance related to preventive services in effect on January 8, 2024, and in chapter 284-43 WAC, a plan may (~~rely on the relevant evidence base and~~) use reasonable

medical management techniques (~~(, based on necessity or appropriateness,)~~) to determine the frequency, method, treatment, or setting for the provision of (~~(a recommended preventive health)~~) an item or service described in RCW 48.43.047;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of (~~(nineteen)~~) 19, or covers dependent children age (~~(nineteen)~~) 19 or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for (~~(a recommended preventive service)~~) an item or service described in RCW 48.43.047, including providing multiple prevention and screening services at a single visit or across multiple visits. Medical management techniques may not be used that limit enrollee choice in accessing the full range of contraceptive drugs, devices, or other products approved by the federal Food and Drug Administration.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan establishes specific limitations on services classified to the preventive services category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans.

Specifically, the base-benchmark plan excludes coverage for obesity or weight control other than covered nutritional counseling. Health plans must cover certain obesity-related services that are listed as A or B recommendations by the U.S. Preventive Services Task Force, consistent with (~~(42 U.S.C. 300gg-13 (a) (1))~~) RCW 48.43.047 and 45 C.F.R. 147.130 (a) (1) (i).

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Sec. 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b) (i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) Each category of essential health benefits must at a minimum cover services required by current state law and be consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017.

(13) This section applies to health plans that have an effective date of January 1, 2020, or later.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-5800 Plan cost-sharing and benefit substitutions and limitations. (1) A health benefit plan must not apply cost-sharing requirements to Native Americans purchasing a health benefit plan through the exchange, whose incomes are at or below (~~three hundred~~) 300 percent of federal poverty level.

(2) A small group health benefit plan that includes the essential health benefits package may not impose annual cost-sharing or deductibles that exceed the maximum annual amounts that apply to high deductible plans linked to health savings accounts, as set forth in the most recent version of IRS Publication 969, pursuant to Section 106 (c)(2) of the Internal Revenue Code of 1986, and Section 1302 (c)(2) of PPACA.

(3) An issuer may use reasonable medical management techniques to control costs, including promoting the use of appropriate, high value preventive services, providers and settings. An issuer's policies must permit waiver of an otherwise applicable copayment for a service that

is tied to one setting but not the preferred high-value setting, if the enrollee's provider determines that it would be medically inappropriate to have the service provided in the lower-value setting. An issuer may still apply applicable in-network requirements.

(4) (a) An issuer may not require cost-sharing for preventive services as defined in RCW 48.43.047, delivered by network providers (~~(, specifically related to those with an A or B rating in the most recent recommendations of the United States Preventive Services Task Force, women's preventive health care services recommended by the U.S. Health Resources and Services Administration (HRSA) and HRSA Bright Futures guideline designated pediatric services)~~). If a health plan offered by an issuer does not have in its network a provider who can provide an item or service described in RCW 48.43.047, the plan must cover the item or service when performed by an out-of-network provider and may not impose cost sharing with respect to the item or service.

(b) An issuer must post on its website a list of the specific preventive and wellness services mandated by PPACA or RCW 48.43.047 that it covers.

(5) If an issuer establishes cost-sharing levels, structures or tiers for specific essential health benefit categories, the cost-sharing levels, structures or tiers must not be discriminatory. "Cost-sharing" has the same meaning as set forth in RCW 48.43.005 and WAC 284-43-0160 (~~((+8))~~).

(a) An issuer must not apply cost-sharing or coverage limitations differently to enrollees with chronic disease or complex underlying medical conditions than to other enrollees, unless the difference provides the enrollee with access to care and treatment commensurate with the enrollee's specific medical needs, without imposing a surcharge or other additional cost to the enrollee beyond normal cost-sharing requirements under the plan.

(b) An issuer must not establish a different cost-sharing structure for a specific benefit or tier for a benefit than is applied to the plan in general if the sole type of enrollee who would access that benefit or benefit tier is one with a chronic illness or medical condition.

(6) For health plans that include prescription drug coverage issued or renewed on or after January 1, 2025, a health carrier or its health benefit manager may not increase an enrollee's cost-sharing obligation mid-plan year for a prescription drug refill of an antipsychotic, antidepressant, antiepileptic, or other drug prescribed to the enrollee to treat a serious mental illness, if the enrollee is medically stable on the drug, and a participating provider continues to prescribe the drug.

AMENDATORY SECTION (Amending WSR 20-24-040, filed 11/23/20, effective 12/24/20)

WAC 284-43-5980 Notice requirement. (1) An issuer offering a plan shall take appropriate initial and continuing steps to notify enrollees, applicants, and members of the public of the following:

(a) The issuer does not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation in its benefits and services;

(b) The issuer provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and

information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;

(c) The issuer provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited-English proficiency;

(d) How to obtain the aids and services in (b) and (c) of this subsection;

(e) An identification of, and contact information for, the employee responsible for compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980;

(f) How to file a grievance with the issuer related to the issuer's compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980; and

(g) How to file a complaint with the commissioner related to the issuer's compliance with RCW 48.43.0128 and WAC 284-43-5935 through this section or with the federal Department of Health and Human Services, Office of Civil Rights related to the issuer's compliance with 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act).

(2) An issuer offering a plan shall:

(a) As described in subsection (7) of this section, post a notice that conveys the information in subsection (1)(a) through (g) of this section; and

(b) As described in subsection (8) of this section, if applicable, post a nondiscrimination statement that conveys the information in subsection (1)(a) of this section.

(3) To ~~((satisfy))~~ aid in compliance with the requirements of this section, issuers may use the sample notices published at ~~((81 Fed. Reg. 31472 through 31473 (May 18, 2016) that convey:—~~

~~(a) The information in subsection (1)(a) through (g) of this section; and~~

~~(b) The information in subsection (1)(a) of this section))~~
<https://www.hhs.gov/civil-rights/for-providers/resources-covered-entities/index.html>.

For use beginning January 1, 2022, the notice referenced in ~~((a) or (f))~~ this subsection must be modified to identify the office of the insurance commissioner as the designated entity to file a complaint regarding compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980 and the federal Department of Health and Human Services, Office of Civil Rights as the designated entity to file a complaint regarding compliance related to the issuer's compliance with 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act). ~~((Until that date, issuers may continue to use the sample notice published at 81 Fed. Reg. 31472 through 31473 (May 18, 2016).))~~

(4) Except to the extent provided otherwise in subsection (5) of this section, each issuer shall:

(a) As described in subsection (7)(a) of this section, post taglines in at least the top ~~((fifteen))~~ 15 languages spoken by individuals with limited-English proficiency in Washington state; and

(b) As described in subsection (8)(b) of this section, if applicable, post taglines in at least the top two languages spoken by individuals with limited-English proficiency in Washington state.

(5) Plans deemed by the commissioner to have a short-term limited purpose or duration that are offered in Washington state must come into compliance with the language assistance notice and tagline requirements in this section on or before April 1, 2021.

(6) To satisfy the requirements of this section, issuers may use taglines provided by the federal Department of Health and Human Services pursuant to 45 C.F.R. 92.8, as in effect on January 1, 2017.

(7)(a) Each issuer shall post the notice required by subsection (1) of this section and the taglines required by subsection (4)(a) of this section in a conspicuously visible font size:

(i) In significant publications and significant communications targeted to enrollees, applicants, and members of the public, except for significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures;

(ii) In conspicuous physical locations where the issuer interacts with the public; and

(iii) In a conspicuous location on the issuer's website accessible from the home page of the issuer's website.

(b) An issuer may also post the notice and taglines in additional publications and communications.

(8) Each issuer shall post, in a conspicuously visible font size, in significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures:

(a) The nondiscrimination statement required by subsection (1)(a) of this section; and

(b) The taglines required by subsection (4)(b) of this section.

(9) An issuer may combine the content of the notice required in subsection (1) of this section with the content of other notices if the combined notice clearly informs individuals of their rights under RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980 and 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act).

OTS-5873.1

AMENDATORY SECTION (Amending WSR 23-24-034, filed 11/30/23, effective 1/1/24)

WAC 284-170-130 Definitions. Except as defined in other sub-chapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Allowed amount" has the meaning set forth in RCW 48.43.005.

(3) (a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(b) "Audio-only telemedicine" does not include:

(i) The use of facsimile, email, or text messages, unless the use of text-like messaging is necessary to ensure effective communication with individuals who have a hearing, speech, or other disability; or

(ii) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results.

(4) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(5) "Clinical review criteria" means the written screens, or screening procedures, decision rules, medical protocols, or clinical practice guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services, including prescription drug benefits, under the auspices of the applicable health plan. Clinical approval criteria has the same meaning as clinical review criteria.

(6) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(7) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.

(8) "Disciplining authority" has the meaning set forth in RCW 18.130.020.

(9) "Distant site" has the meaning set forth in RCW 48.43.735.

(10) "Emergency medical condition" has the meaning set forth in RCW 48.43.005.

(11) "Emergency services" has the meaning set forth in RCW 48.43.005.

(12) "Enrollee point-of-service cost-sharing" or "cost-sharing" has the meaning set forth in RCW 48.43.005.

(13) "Established relationship" means the provider providing audio-only telemedicine has access to sufficient health records to ensure safe, effective, and appropriate care services and:

(a) ~~((For health care services included in the essential health benefits category of mental health and substance use disorder services, including behavioral health treatment:~~

~~(i))~~ The covered person has had, within the past three years, at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with:

~~((A))~~ (i) The provider providing audio-only telemedicine;

~~((B))~~ (ii) A provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or

~~((C))~~ (iii) A locum tenens or other provider who is the designated back up or substitute provider for the provider providing audio-only telemedicine who is on leave and is not associated with an established medical group, clinic, or integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW; or

~~((ii))~~ (b) The covered person was referred to the provider providing audio-only telemedicine by another provider who has:

~~((A))~~ (i) Had, within the past three years, at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person; and

~~((B))~~ (ii) Provided relevant medical information to the provider providing audio-only telemedicine.

~~((C))~~ (iii) A referral includes circumstances in which the provider who has had at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person participates in the audio-only telemedicine encounter with the provider to whom the covered person has been referred.

~~((b) For any other health care service:~~

~~(i) The covered person has had, within the past two years, at least one in-person appointment, or, until July 1, 2024, at least one real-time interactive appointment using both audio and video technology, with:~~

~~(A) The provider providing audio-only telemedicine; or~~

~~(B) A provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or~~

~~(C) A locum tenens or other provider who is the designated back up or substitute provider for the provider providing audio-only telemedicine who is on leave and is not associated with an established medical group, clinic, or integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW; or~~

~~(ii) The covered person was referred to the provider providing audio-only telemedicine by another provider who has:~~

~~(A) Had, within the past two years, at least one in-person appointment or, until July 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the covered person; and~~

~~(B) Provided relevant medical information to the provider providing audio-only telemedicine.~~

~~(C) A referral includes circumstances in which the provider who has had at least one in-person appointment, or, until July 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the covered person participating in the audio-only telemedicine encounter with the provider to whom the covered person has been referred.)~~

(14) "Expedited prior authorization request" has the meaning set forth in RCW 48.43.830.

(15) "Facility" means an institution providing health care services including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory,

and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(16) "Formulary" means a listing of drugs used within a health plan.

(17) "Grievance" has the meaning set forth in RCW 48.43.005.

(18) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(19) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(20) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in The Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(21) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(22) "Hospital" has the meaning set forth in RCW 48.43.735.

(23) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. Sec. 1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. Sec. 450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. Sec. 450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. Sec. 47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. Sec. 1603(29).

(24) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(25) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

(26) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(27) "Mental health services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization, residential treatment, out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize, or ameliorate the effects of a mental disorder listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association, including diagnoses and treatment for substance use disorder.

(28) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(29) "Originating site" means the physical location of a patient receiving health care services through telemedicine, and includes those sites described in WAC 284-170-433.

(30) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in Physicians Current Procedural Terminology, published by the American Medical Association.

(31) "Participating provider" and "participating facility" mean a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(32) "Patient consent" means a voluntary and informed decision by a patient, following an explanation by the provider or auxiliary personnel under the general supervision of the provider presented in a manner understandable to the patient that is free of undue influence, fraud or duress, to consent to a provider billing the patient or the patient's health plan for an audio-only telemedicine service under RCW 48.43.735 or WAC 284-170-433.

(33) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(34) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(35) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(36) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(37) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(38) "Real time communication" means synchronous and live communication between a provider and a patient. It does not include delayed or recorded messages, such as email, facsimile or voicemail.

(39) "Same amount of compensation" means providers are reimbursed by a carrier using the same allowed amount for telemedicine services as they would if the service had been provided in-person unless negotiation has been undertaken under RCW 48.43.735 or WAC 284-170-433(~~((+2))~~). Where consumer cost-sharing applies to telemedicine services, the consumer's payment combined with the carrier's payment must be the same amount of compensation, or allowed amount, as the carrier would pay the provider if the telemedicine service had been provided in person. Where an alternative payment methodology other than fee-for-service payment would apply to an in-person service, "same amount of compensation" means providers are reimbursed by a carrier using the same alternative payment methodology that would be used for the same service if provided in-person, unless negotiation has been undertaken under RCW 48.43.735 or WAC 284-170-433(~~((+2))~~).

(40) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

(41) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005(~~((+34))~~) comprising from one to 50 eligible employees.

(42) "Standard prior authorization request" has the meaning set forth in RCW 48.43.830.

(43) "Store and forward technology" has the meaning set forth in RCW 48.43.735.

(44) "Substance use disorder services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization, residential treatment, or out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize, or ameliorate the effects of a substance use disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association, including diagnoses and treatment for substance use disorder.

(45) "Substitute drug" means a prescription medication, drug or therapy that a carrier covers based on an exception request. When the exception request is based on therapeutic equivalence, a substitute drug means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

(46) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

(47) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology or audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this chapter, "telemedicine" does not include facsimile, email, or text messaging, unless the use of text-like messaging is necessary to ensure effective communication with individuals who have a hearing, speech, or other disability.

WSR 24-20-138

PROPOSED RULES

BATES TECHNICAL COLLEGE

[Filed October 2, 2024, 8:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-114.

Title of Rule and Other Identifying Information: Student rights and responsibilities.

Hearing Location(s): On November 5, 2024, at 1:00 p.m., at Bates Technical College Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405, downtown campus auditorium.

Date of Intended Adoption: November 30, 2024.

Submit Written Comments to: Hannah Herber, 1101 South Yakima Avenue, Tacoma, WA 98405, email Hannah.herber@batestech.edu, beginning October 16, 2024, at 8:00 a.m., by November 1, 2024, at 4:00 p.m.

Assistance for Persons with Disabilities: Contact Aubrie Swain, phone 253-680-7012, email aubrie.swain@batestech.edu, by November 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring the Bates Technical College's (college) student conduct code (code) into compliance with a new final rule governing sex discrimination grievance procedures (Title IX procedures) recently adopted by the United States Department of Education. The college proposes to repeal now out-dated Title IX procedures and to repeal the existing student code of conduct and replace it with an updated student code that includes required Title IX procedures. The new code also includes updates to comply with state law prohibiting hazing and updates to ensure the code's prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: The changes are necessary to comply with federal regulations governing sex discrimination, to comply with state law prohibiting hazing, and to ensure the interests of the college community and procedural rights of students are adequately protected.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, Title IX, 20 U.S.C. § 1681 et. seq.

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tina Muller, 1101 South Yakima Avenue, Tacoma, WA 98405, 253-680-7007.

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 cost-benefit analysis in RCW 34.05.328 does not apply to these 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 19.85.061 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: Title IX, 20 U.S.C. § 1681 et. seq.; failure to comply with Title IX regulations could re-

sult in corrective action by the United States Department of Education, including possible loss of federal funding.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule adopts revisions to the college's student code of conduct, which describes student rights and responsibilities. It does not impact rights or responsibilities of small businesses. Moreover, the proposed rule is necessary to comply to changes in federal Title IX regulations, state statutes, and to ensure the protection of individual students' constitutional and procedural rights.

Scope of exemption for rule proposal:

Is fully exempt.

October 2, 2024

Hannah Herber

Executive Assistant to the President

OTS-5646.1

**Chapter 495A-119 WAC
STUDENT CODE OF CONDUCT**

NEW SECTION

WAC 495A-119-010 Authority. The Bates Technical College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 495A-119-020 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students or student groups that occurs:

- (a) On college premises;

(b) At or in connection with college programs or activities; or

(c) 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 locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any degree or certificate, 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 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 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.

NEW SECTION

WAC 495A-119-030 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 student affairs, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that 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 that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sex discrimination.

(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.

NEW SECTION

WAC 495A-119-040 Definitions. The following definitions shall apply for 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 subjected 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 a college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(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.

(6) "**Disciplinary appeal**" is the process by which an aggrieved 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 a dismissal from the college are heard by the student conduct committee. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

(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) By sending the document by email and 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.

(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 a student who is alleged to have violated student conduct code.

(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) By 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 that the document is emailed and deposited in the mail, whichever is first.

(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 particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered a "student" for purposes of this chapter.

(16) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(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, including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.

(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, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

NEW SECTION

WAC 495A-119-050 Prohibited student conduct. The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team or living group, 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) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that 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.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) **Academic dishonesty.** Any act of academic dishonesty, including:

(a) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writings, 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 - 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) **Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.**

(4) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) **Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;**

(b) **Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee;**

(c) **Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.**

(5) **Alcohol.** Use, possession, 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.

(6) **Cannabis, drug, and tobacco violations.**

(a) **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 cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) **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.

(c) **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.

(7) **Cyber misconduct.** 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.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **Discriminatory harassment.**

(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.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

(10) **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.

(11) **Failure to comply with directive.** Failure to comply with the direction of a college officer (campus safety) or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(12) **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 not 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.

(13) **Hazing.** Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including 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, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

(a) 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;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(14) **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.

(15) **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.

(16) **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 ac-

count numbers, other confidential personal information, intellectual property, and college trademarks.

(17) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against 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.

(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) **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** is 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, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(20) **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.

(21) **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 housing, traffic, and parking rules.

(22) **Weapons.** 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 or legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued weapons permits may store their weapons in their 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.

(c) The president 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.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited, thus is allowed.

NEW SECTION

WAC 495A-119-060 Corrective action, disciplinary sanctions, terms and conditions. (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college-sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.

(a) **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for 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 dis-

missal 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 student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the 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 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) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(c) **Not in good standing.** A student deemed "not in good standing" with the college 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 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) **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.

(f) **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.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(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 discipli-

nary 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.

NEW SECTION

WAC 495A-119-070 Hazing sanctions. (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or non-profit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(3) Any student group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(4) Any student group found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

NEW SECTION

WAC 495A-119-080 Initiation of disciplinary action. (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.** 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 sex-based harassment 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 complainant in cases involving allegations of sex discrimination 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 calendar 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 495A-119-060; 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 discrimination, 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.

NEW SECTION

WAC 495A-119-090 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 495A-119-080(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within 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 student conduct officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a 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) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) The student conduct committee shall hear appeals from:

(a) Disciplinary suspensions in excess of 10 instructional days;

(b) Dismissals;

(c) Sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the president.

NEW SECTION

WAC 495A-119-100 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 they are 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 the respondent and the student conduct officer within 10 calendar 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 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 suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495A-119-110 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president or designee, provided a party files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(2) The president 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 president shall give all parties 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 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 president does not make a disposition of the matter within 20 calendar days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

- WAC 495A-119-120 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 president;
 - (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president 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.
- (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 the committee for disqualification of a committee member.
- (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 relation 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. In sex discrimination cases, the college may, in its sole and exclusive 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.

NEW SECTION

- WAC 495A-119-130 Student conduct committee—Prehearing.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.
- (2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. 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 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 calendar days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third 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 chair may provide to the committee members in advance of the hearing copies of the student conduct officer's notification of imposition of discipline (or referral to the committee) and the notice of appeal (or any response to referral) by the respondent. If doing so, however, 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 shall provide reasonable assistance to the respondent 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 an advisor of their choice, which may be an attorney retained at the party's expense.

(10) The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an 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. Respondent and complainant both have the following rights:

(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, student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing 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 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) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to 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 have 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.

NEW SECTION

WAC 495A-119-140 Student conduct committee—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed 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 they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure 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 college's case.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, 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 deter-

mination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; 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 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.

NEW SECTION

WAC 495A-119-150 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the committee chair shall permit the parties to make closing arguments in whatever form, written or verbal, the committee 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 21 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The 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 decision shall also include a determination of appropriate sanctions, 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 a party, 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 its decision to be served on the parties and their attorney, if any. The notice will inform all parties of their appeal rights. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

NEW SECTION

WAC 495A-119-160 Student conduct committee—Review of initial decision. (1) 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 decision shall be deemed final.

(2) 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 pres-

ident'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 20 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.

NEW SECTION

WAC 495A-119-170 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 procedures are 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 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(s) 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 warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter 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 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.

NEW SECTION

WAC 495A-119-180 Classroom conduct. The student code of conduct shall not be construed as preventing an instructor from taking immediate disciplinary action when the instructor is required to act upon such breach of performance dishonesty in order to preserve order and prevent disruptive conduct in the classroom. This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for performance dishonesty.

(1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard without the expressed approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from their classroom/course/lab/clinical/activity for up to three days if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member's syllabus shall outline how an absence of this type will impact the student's responsibilities in completing assignments, other coursework, or activities. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student that must be followed upon returning to the class or activity.

(4) The suspension of up to three days discussed in subsection (3) of this section shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer or designee shall be processed in accordance with this chapter.

(5) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

NEW SECTION

WAC 495A-119-190 Student grievances. (1) Grievances should be filed as soon as possible and no more than 30 days after the incident occurs. For matters relating to Title IX violations, the college shall follow the process previously outlined in this chapter.

(a) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within 10 working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within 10 working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(b) Step two. If the grievance is not resolved at step one, the student may within 10 working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(i) The area administrator shall hear the grievance within 10 working days after receipt of the grievance form and shall render a decision in writing within 10 working days after such hearing.

(ii) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(c) Step three. If the grievance is not resolved at step two, the student may within 10 working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(i) The senior administrator of student services shall hear the grievance within 10 working days after receipt of the written appeal and shall render a decision in writing within 10 working days after such hearing concludes.

(ii) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(iii) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(iv) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

(2) Complaints should be filed as soon as possible and no more than 30 days after the incident occurs.

(a) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within 10 working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within 10 working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(b) Step two. If the grievance is not resolved at step one, the student may within 10 working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(i) The area administrator shall hear the grievance within 10 working days after receipt of the grievance form and shall render a decision in writing within 10 working days after such hearing.

(ii) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(c) Step three. If the grievance is not resolved at step two, the student may within 10 working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(i) The senior administrator of student services shall hear the grievance within 10 working days after receipt of the written appeal and shall render a decision in writing within 10 working days after such hearing concludes.

(ii) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(iii) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(iv) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have binding effect or disposition on any other grievances of similar nature.

NEW SECTION

WAC 495A-119-200 Time limits on filing a grievance. The student must file a grievance within one quarter of the event, which caused the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the grievance is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the grievance before making a decision.

The student must file a complaint within one quarter of the event, which caused the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness, or a leave of absence. No complaints will be considered after two quarters of the occurrence of the

source of the grievance. When either party to the complaint is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the complaint before making a decision.

NEW SECTION

WAC 495A-119-210 Grievances excluded. (1) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual discrimination. The college has separate, specific procedures for such complaints. See the senior administrator of human resources for information on those specific procedures.

(2) A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

(3) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community and technical colleges or the board of trustees of Bates Technical College, District No. 28 are excluded from being grieved.

WSR 24-20-143
PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed October 2, 2024, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-151.

Title of Rule and Other Identifying Information: Health and safety regulations, chapter 504-36 WAC.

Hearing Location(s): On November 5, 2024, at 4:00 p.m., via Zoom meeting, join from [wsu.zoom.us/](https://wsu.zoom.us/j/98436009198) or the Zoom app, Meeting ID 984 3600 9198, Passcode 997113; or join by phone 253-215-8782 (enter meeting ID and passcode when prompted). For help connecting to a Washington State University (university) Zoom meeting see <https://tinyurl.com/2kbrhrjt>. No in-person meeting is being scheduled.

Date of Intended Adoption: January 24, 2024.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, beginning October 16, 2024, by November 4, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, email prf.forms@wsu.edu, by October 31, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the health and safety rules.

Reasons Supporting Proposal: The university administration is updating the control of animals section (WAC 504-36-020) in accordance with recent revisions in RCW 49.60.040, 49.60.214, and 49.60.215.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Kiara Drake, Assistant Director, Compliance and Civil Rights, French Administration Room 225B, Pullman, WA 99164-1023, 509-335-6893; Implementation: Leslie Brunelli, Executive Vice President, Finance and Administration, French Administration 442, Pullman, WA 99164-1048, 509-335-5524; and Enforcement: Vicky Murray, Associate Vice President, WSU Police, Public Safety, French Administration 442, Pullman, WA 99164-1048, 509-335-5524.

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 university does not consider this rule to be a significant legislative 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(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 2, 2024
Deborah L. Bartlett
Policies, Records, and Forms
and University Rules Coordinator

OTS-5753.1

AMENDATORY SECTION (Amending WSR 24-07-031, filed 3/12/24, effective 4/12/24)

WAC 504-36-020 Control of animals. This section governs the control of animals and pets on property owned or controlled by Washington State University.

(1) This section does not apply to animals owned by the university or under its care, custody, and/or control.

(2) Subsections (3) and (8) of this section do not apply to trained guide dogs or service animals that are being used by persons with disability or service animals in training permitted on property owned or controlled by the university under RCW 49.60.040, 49.60.214, and 49.60.215.

(3) Animals are not permitted in university buildings, except in facilities that are the site of university-authorized events, such as stock shows, horse shows, parades, or demonstrations at sporting events, where the animals are participants in said events, or as allowed by university housing policies.

The executive vice president for finance and administration, the president, chancellor, or such other person as the president may designate, may waive this subsection (~~for guide dogs in training or~~), allowing university employees to bring service animals in training to their university workplaces, provided that such animals are present on campus with trainers or handlers who have a demonstrated history of training such animals.

(4) Animals are not permitted on university property unless under immediate control of their keeper, except as otherwise allowed under this rule.

(a) "Keeper" includes an owner, handler, trainer, or any person responsible for the control of an animal.

(b) "Under control" means the restraint of an animal by means of a leash or other device that physically restrains the animal to the keeper's immediate proximity. An animal which is otherwise securely confined while in or upon any motor vehicle, including a trailer, is deemed to be under control.

Trained guide dogs or service animals and service animals in training must be harnessed, leashed, or tethered, unless these devices interfere with the animal's ability to do the work or perform the tasks for which the animal is trained or in training or the individual's disability prevents use of these devices. In that case, the keeper must maintain control of the animal through voice, signal, or use of other effective controls.

(5) The requirement that animals be under immediate control of their keeper does not apply to:

(a) A dog being exercised in any area designated by the university as leash optional;

(b) A dog undergoing training at a certified dog obedience class on the university campus and authorized by the dean of the college of veterinary medicine, the executive vice president for finance and administration, the president, chancellor, or their designee;

(c) A dog while being exhibited in an organized dog show on university property;

(d) A dog trained to aid law enforcement officers while being used for law enforcement purposes or during demonstrations to illustrate the dog's capabilities;

(e) A dog trained and under the control of a university farm manager to aid farm managers while moving or handling livestock; and

(f) An animal participating in a university-authorized event, such as a stock show, horse show, parade, extension or outreach event, or demonstrations at a sporting, teaching, or agricultural event.

(6) Any stray dog or other animal that is running loose on university property is subject to impound by local authorities in accordance with the municipal or county ordinances that apply to each campus.

(7) The keeper of any animal must remove for disposal any fecal matter deposited by the animal on university premises before the keeper leaves the area where the matter was deposited. This requirement does not apply to an individual who, by reason of disability, is unable to comply, or to individuals bringing animals to university-authorized events where arrangements have been made for the removal of fecal matter.

(8) The executive vice president for finance and administration, the president, a chancellor, a service animal administrator, or such other person as designated by the president, may designate areas on a campus otherwise open to the public as restricted from access by dogs or other animals even when under the control of their keepers for safety reasons or where the presence of dogs or other animals conflicts with the educational or research missions of the university.

WSR 24-20-146
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed October 2, 2024, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-09-046.

Title of Rule and Other Identifying Information: WAC 332-30-106 Definitions, and 332-30-138 Commercial finfish net pen aquaculture.

Hearing Location(s): On November 7, 2024, at 5:00 - 7:00 p.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: December 3, 2024.

Submit Written Comments to: Noel Sharp, Department of Natural Resources (DNR) Aquatics, 1111 Washington Street S.E., Mailstop 47027, email netpens@dnr.wa.gov, fax 360-902-1081, (PREFERRED METHOD) smart comment <https://wadnr.commentinput.com?id=HdVJB8bZ5>, beginning October 16, 2024, 8:00 a.m. PST, by November 7, 2024, 11:59 p.m. PST.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DNR intends to add a new section to chapter 332-30 WAC and amend WAC 332-30-106 to better achieve DNR's management guidelines with respect to commercial finfish net pen aquaculture. The proposed rule language would bar any future commercial finfish net pen aquaculture uses on DNR managed, state-owned aquatic lands.

Reasons Supporting Proposal: The proposed rule language reflects DNR's management responsibilities and objectives regarding DNR managed state-owned aquatic lands. This rule will make DNR's management more consistent with neighboring states and countries. Finfish net pen farming is prohibited in Alaska, Oregon, and California and open water salmon net pen aquaculture will be prohibited in Canada by June 30, 2029.

The proposed rule language addresses, among other things, the department's environmental concerns such as degradation of the benthic environment, biofouling, and additional ecological impacts to aquatic habitat in relation to commercial finfish net pet aquaculture operations on state-owned aquatic land. DNR has focused its review on potential stressors that may result from commercial finfish net pen aquaculture operations to the habitat DNR is specifically charged with managing and conserving for future generations.

Habitats and Habitat Elements:

- Native aquatic vegetation - eelgrass beds, kelp forests, and other macroalgae - are recognized for their ecological, economic, and sociocultural values. Macroalgae can range from the intertidal to 30m depth (e.g., crustose corallines).
- Benthic sediments foster a high diversity of macro and micro invertebrates which are critical for the storage and cycling of organic matter and carbon - forming the base of many food chains. Macro invertebrates such as octocorals, gorgonians, and sea pens function as highly rugose habitat in deeper waters (e.g., the cloud sponge ranges from 10m to 1600m depth). These sediment dwelling species are sensitive to changes in sediment and water quality.
- Shellfish habitats and harvest areas contribute a suite of ecological services including provisioning important biogenic nurs-

ery habitat, the cycling of nutrients, filtering of pathogens, maintenance of water quality, carbon sequestration, and shoreline stability.

Effluent:

- CFNPA effluent is predominantly organic, largely arising from fish feed and its byproducts (e.g., uneaten feed, ingested but undigested feed, and digested feed excreted to the environment); biofouling material falling off the nets; and fish carcasses¹. Periodic treatment of sea lice can lead to circulation of the pesticide through the surrounding environment, and therapeutics such as antibiotics can also circulate beyond the net pen. Trace metals such as zinc and copper have been found up to 150m from former CFNPA facilities in Canada².
- Beneath and proximal to CFNPA facilities, impacts to benthic communities include increased oxygen demand and resulting lower-oxygen conditions, reduced species diversity, increased tissue necrosis, the accumulation of sometimes lethal levels of phytotoxic sulfides in the root zones where aquatic vegetation resides, and shifts in bacterial communities. Climate change impacts such as events of increased water temperature, decreased pH, and decreased dissolved oxygen may lead to greater cumulative effects by posing additional stressors to benthic communities.
- The impact of a CFNPA effluent on benthic communities depends on loading (number and density of fish leading to the quantity and concentration of organic matter deposited); water depth and current velocity (greater dispersion in deeper and faster waters); pen configuration (orientation to current and relative location of pens can impact dispersion); feed type (different settling rates and digestibility); and the composition of the benthic community beneath the farm (more diverse and productive communities may assimilate waste products more readily but also may experience more impacts)³⁻⁵.

Marine Debris:

- CFNPA can produce marine debris, including plastics from sources such as floating collars or handrails; collar floatation; buoys from mooring systems; ropes from mooring systems; net enclosures; predator nets; and feeding systems.
- The impact of marine debris from CFNPA operations on benthic communities depends on exposure to storm or high wave events (which may increase in frequency and/or severity with climate change), waste management practices (methods to reduce waste and to recognize release, and to subsequently respond to that release), installation maintenance (to prevent wear and failure), and/or debris survey methods during the closure of a facility (to ensure any associated debris from the structure is removed)⁴⁻⁶.

References:

1. Kalantzi, I. & Karakassis, I. Benthic impacts of fish farming: Meta-analysis of community and geochemical data. *Mar. Pollut. Bull.* **52**, 484–493 (2006).
2. Hamoutene, D. et al. Assessing trace-elements as indicators of marine finfish aquaculture across three distinct Canadian coastal regions. *Mar. Pollut. Bull.* **169**, 112557 (2021).
3. Parametrix. *Final Programmatic Environmental Impact Statement Fish Culture in Floating Net Pens*. <https://fortress.wa.gov/ecy/publications/documents/1206019.pdf> (1990).
4. Washington State Department of Ecology. *Commercial Marine Finfish Net Pen Aquaculture in Puget Sound and Strait of Juan de Fuca*. <https://apps.ecology.wa.gov/publications/documents/2206008.pdf> (2022).
5. Hawkins, J. L., Bath, G. B., Dickhoff, W. W. & Morris, J. A. State of Science on Net Pen Aquaculture in Puget Sound Washington.pdf. (2019).
6. Huntington, T. *Marine Litter and Aquaculture Gear – White Paper. Report Produced by Poseidon Aquatic Resources Management Ltd for the Aquaculture Stewardship Council*. 20 (2019).

Statutory Authority for Adoption: The management philosophy DNR follows regarding state-owned aquatic lands is described generally in RCW 79.105.010 where the legislative intent of the Aquatic Lands Act is outlined. In RCW 79.105.030, specific management guidelines for providing a balance of public benefits for all citizens of the state are given including: Encouraging direct public use and access; fostering water-dependent uses; ensuring environmental protection; utilizing renewable resources; and generating revenue consistent with the above. Pursuant to RCW 79.105.360, DNR shall adopt rules as are necessary to carry out the purposes of RCW 79.105.010, 79.105.030, and other certain aquatic land statutes. In addition, to effectively carry out these management directives, RCW 43.30.540 specifically authorizes the board of natural resources to make and enforce rules and regulations to carry out the provisions of chapters 79.105 through 79.140 RCW.

Statute Being Implemented: RCW 43.30.540 and 79.105.360.

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

Name of Proponent: DNR, aquatic resources division, governmental.

Name of Agency Personnel Responsible for Drafting: Michal Rechner, Olympia, Washington, 360-902-1100; Implementation: Thomas Gorman, Olympia, Washington, 360-902-1100; and Enforcement: Commissioner of Public Lands, Olympia, Washington, 360-902-1000.

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 Noel Sharp, 1111 Washington Street S.E., Mailstop 47027, phone 360-995-2496, fax 360-902-1081, email netpens@dnr.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: There are no commercial finfish net pen aquaculture operations on state-owned aquatic lands, so this proposed rule language does not impact small businesses.

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

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DNR completed a small business economic impact statement that identified no impacts to small businesses. There are no commercial finfish net pen aquaculture operations on state-owned aquatic lands, so this proposed rule language could not impact small businesses.

A copy of the detailed cost calculations may be obtained by contacting Noel Sharp, 1111 Washington Street S.E., Mailstop 47027, phone 360-995-2496, fax 360-902-1081, email netpens@dnr.wa.gov.

October 2, 2024
Thomas Gorman
Division Manager

OTS-5900.1

AMENDATORY SECTION (Amending WSR 06-06-005, filed 2/16/06, effective 3/19/06)

WAC 332-30-106 Definitions. All definitions in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). For the purpose of this chapter:

(1) "Accretion" means the natural buildup of shoreline through the gradual deposit of alluvium. The general principle of common law applicable is that a riparian or littoral owner gains by accretion and reliction, and loses by erosion. Boundary lines generally will change with accretion.

(2) "Alluvium" means material deposited by water on the bed or shores.

(3) "Anniversary date" means the month and day of the start date of an authorization instrument unless otherwise specified in the instrument.

(4) "Aquaculture" means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include, but are not limited to, hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

(5) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters (RCW 79.105.060(1)). Aquatic lands are part of the public lands of the state of Washington (see subsection ~~((+51+))~~ (52) of this section). Included in aquatic lands are public places subsection ~~((+53+))~~ (54) of this section, waterways subsection ~~((+78+))~~ (79) of this section, bar islands, avulsively abandoned beds and channels of navigable bodies of water, managed by the department of natural resources directly, or indirectly through management agreements with other governmental entities.

(6) "Aquatic land use classes" means classes of uses of tideland, shorelands and beds of navigable waters that display varying degrees of water dependency. ~~((See WAC 332-30-121.))~~

(7) "Authorization instrument" means a lease, material purchase, easement, permit, or other document authorizing use of state-owned aquatic lands and/or materials.

(8) "Avulsion" means a sudden and perceptible change in the shoreline of a body of water. Generally no change in boundary lines occurs.

(9) "Beds of navigable waters" means those submerged lands lying waterward of the line of extreme low tide in navigable tidal waters and waterward of the line of navigability in navigable lakes, rivers and streams. The term, "bedlands" means beds of navigable waters.

(10) "Commerce" means the exchange or buying and selling of goods and services. As it applies to aquatic land, commerce usually involves transport and a land/water interface.

(11) "Commercial finfish net pen aquaculture" means a system of nets, cages, or other containment systems in open water used to cultivate, feed, and raise "finfish" (as defined in WAC 220-370-050(3)) to marketable size for the purpose of harvesting and selling the same as a crop. Commercial finfish net pen aquaculture does not include operations and containment systems used to raise finfish for open-water release or used to raise finfish solely for tribal ceremonial and subsistence uses.

(12) "Covered moorage" means slips and mooring floats that are covered by a single roof with no dividing walls.

~~((12))~~ (13) "Department" means the department of natural resources.

~~((13))~~ (14) "Dredging" means enlarging or cleaning out a river channel, harbor, etc.

~~((14))~~ (15) "Educational reserves" means accessible areas of aquatic lands typical of selected habitat types which are suitable for educational projects.

~~((15))~~ (16) "Enclosed moorage" means moorage that has completely enclosed roof, side and end walls similar to a car garage i.e., boathouse.

~~((16))~~ (17) "Environmental reserves" means areas of environmental importance, sites established for the continuance of environmental baseline monitoring, and/or areas of historical, geological or biological interest requiring special protective management.

~~((17))~~ (18) "Erosion" means the gradual cutting away of a shore by natural processes. Title is generally lost by erosion, just as it is gained by accretion.

~~((18))~~ (19) "Extreme low tide" means the line as estimated by the federal government below which it might reasonably be expected that the tide would not ebb. In Puget Sound area generally, this point is estimated by the federal government to be a point in elevation 4.50 feet below the datum plane of mean lower low water, (0.0). Along the Pacific Ocean and in the bays fronting thereon and the Strait of Juan due Fuca, the elevation ranges down to a minus 3.5 feet in several locations.

~~((19))~~ (20) "Fair market value" means the amount of money which a purchaser willing, but not obligated, to buy the property would pay an owner willing, but not obligated, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied (*Donaldson v. Greenwood*, 40 Wn.2d 238, 1952). Such uses must be consistent with applicable federal, state and local laws and regulations affecting the property as of the date of valuation.

~~((20))~~ (21) "First class shorelands" means the shores of a navigable lake or river belonging to the state not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or the inner harbor line where established and within or in front of the corporate limits of any city, or within two miles thereof upon either side (RCW 79.105.060(3)). These boundary descriptions represent the general rule; however exceptions do exist. To determine if the shorelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

~~((21))~~ (22) "First class tidelands" means the shores of navigable tidal waters belonging to the state lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide (RCW 79.105.060(4)). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide, or the inner harbor line where established, is the waterward boundary. To determine if the tidelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

~~((22))~~ (23) "Fiscal year" means a period of time commencing on the first day of July and ending on the ~~((thirtieth))~~ 30th day of June of the succeeding year. A fiscal year is identified by the year in which it ends, e.g., fiscal year 1985 is the period July 1, 1984, through June 30, 1985.

~~((23))~~ (24) "Floating house" means any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. "Floating houses" include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel as provided in subsection ~~((74))~~ (75) of this section. A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating house, not a vessel.

~~((24))~~ (25) "Governmental entity" means the federal government, the state, county, city, port district, or other municipal corporation or political subdivision thereof.

~~((25))~~ (26) "Harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce (RCW 79.105.060(5)). Harbor areas exist between the inner and outer harbor lines as established by the state harbor line commission.

~~((26))~~ (27) "Harbor area use classes" means classes of uses of harbor areas that display varying degrees of conformance to the purpose for which harbor areas were established under the Constitution.

~~((27))~~ (28) "Harbor line" means either or both:

(a) A line (outer harbor line) located and established in navigable waters as provided for in section 1 of Article XV of the state Constitution beyond which the state shall never sell or lease any rights whatever to private persons (RCW 79.105.060(12)).

(b) A line (inner harbor line) located and established in navigable waters between the line of ordinary high tide and the outer harbor line, constituting the inner boundary of the harbor area (RCW 79.105.060(8)).

~~((28))~~ (29) "Inflation rate" means, for a given year, the percentage rate of change in the previous calendar year's all commodity producer price index of the Bureau of Labor Statistics of the United States department of commerce (RCW 79.105.060(7)). The rate published by the bureau during May of each year for the previous calendar year shall be the rate for the previous calendar year.

~~((29))~~ (30) "Interest rate" shall be ~~((twelve))~~ 12 percent per annum (RCW 43.17.240).

~~((30))~~ (31) "Interim uses" means certain uses which may, under special circumstances, be allowed to locate in harbor areas (see WAC 332-30-115(5)).

~~((31))~~ (32) "Inventory" means both a compilation of existing data on man's uses, and the biology and geology of aquatic lands as well as the gathering of new information on aquatic lands through field and laboratory analysis. Such data is usually presented in map form such as the *Washington Marine Atlas*.

~~((32))~~ (33) "Island" means a body of land entirely and customarily surrounded by water. Land in navigable waters which is only surrounded by water in times of high water, is not an island within the rule that the state takes title to newly formed islands in navigable waters.

~~((33))~~ (34) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.

~~((34))~~ (35) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility (RCW 79.105.060(9)).

~~((35))~~ (36) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility (RCW 79.105.060(10)).

~~((36))~~ (37) "Marine land" means those lands from the mean high tide mark waterward in marine and estuarine waters, including intertidal and submerged lands. Marine lands represents a portion of aquatic lands.

~~((37))~~ (38) "Meander line" means fixed determinable lines run by the federal government along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the sinuosities of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of the public lands bordering thereon.

~~((38))~~ (39) "Moorage facility" means a marina, open water moorage and anchorage area, pier, dock, mooring buoy, or any other similar fixed moorage site.

~~((39))~~ (40) "Motorized vehicular travel" means movement by any type of motorized equipment over land surfaces.

~~((40))~~ (41) "Multiple use management" means a management philosophy which seeks to insure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.

~~((41))~~ (42) "Navigability or navigable" means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.

~~((42))~~ (43) "Navigation" means the movement of vessels to and from piers and wharves.

~~((43))~~ (44) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility (RCW 79.105.060(11)).

~~((44))~~ (45) "Open moorage" means moorage slips and mooring floats that have completely open sides and tops.

~~((45))~~ (46) "Open water moorage and anchorage areas" are areas of state-owned aquatic lands leased for moorage and anchorage that do not abut uplands and do not include a built connection to the uplands. They are generally in the center of a waterbody, to provide moorage in addition to any marinas and docks along the edge of the waterbody. They may contain mooring buoys, floating moorage docks, other moorage facilities not connected to the shoreline, and/or anchorage areas, as determined by the lessee and approved by the department. These areas are leased in accordance with WAC 332-30-139(5) and subject to the restrictions therein.

~~((46))~~ (47) "Optimum yield" means the yield which provides the greatest benefit to the state with particular reference to food production and is prescribed on the basis of the maximum sustainable yield over the statewide resource base as modified by any relevant economic, social or ecological factor.

~~((47))~~ (48) "Ordinary high tide" means the same as mean high tide or the average height of high tide. In Puget Sound, the mean high tide line varies from 10 to 13 feet above the datum plane of mean lower low water (0.0).

~~((48))~~ (49) "Ordinary high water" means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.

~~((49))~~ (50) "Port district" means a port district created under Title 53 RCW (RCW 79.105.060(14)).

~~((50))~~ (51) "Public benefit" means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; energy and mineral production; utilization of renewable resources; promotion of navigation and commerce by fostering water-dependent uses; and encouraging direct public use and access; and generating revenue in a manner consistent with RCW 79.105.030.

~~((51))~~ (52) "Public lands" means lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as herein defined, and the beds of navigable waters belonging to the state (RCW 79.02.010).

~~((52))~~ (53) "Public interest" means....(reserved).

~~((53))~~ (54) "Public place" means a part of aquatic lands set aside for public access through platted tidelands, shorelands, and/or harbor areas to the beds of navigable waters.

~~((54))~~ (55) "Public tidelands" means tidelands belonging to and held in public trust by the state for the citizens of the state, which are not devoted to or reserved for a particular use by law.

~~((55))~~ (56) "Public trust" means that certain state-owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in the land. The department has the responsibility to manage these lands in the best interest of the general public.

~~((56))~~ (57) "Public use" means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.

~~((57))~~ (58) "Public use beach" means a state-owned beach available for free public use but which may be leased for other compatible uses.

~~((58))~~ (59) "Public utility line" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines (RCW 79.105.060(15)).

~~((59))~~ (60) "Real rate of return" means the average for the most recent ~~((ten))~~ 10 calendar years of the average rate of return on conventional real property mortgages as reported by the Federal Home Loan Bank Board or any successor agency, minus the average inflation rate for the most recent ~~((ten))~~ 10 calendar years (RCW 79.105.060(16)).

~~((+60))~~ (61) "Reliction" means the gradual withdrawal of water from a shoreline leaving the land uncovered. Boundaries usually change with reliction.

~~((+61))~~ (62) "Renewable resource" means a natural resource which through natural ecological processes is capable of renewing itself.

~~((+62))~~ (63) "Residential use" means any noncommercial habitation of:

(a) A floating house, as defined in WAC 332-30-106(23); or

(b) A vessel, as defined in WAC 332-30-106(74), when any one of the following applies:

(i) Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of ~~((thirty))~~ 30 days in any ~~((forty))~~ 40-day period or on more than a total of ~~((ninety))~~ 90 days in any ~~((three hundred sixty five))~~ 365-day period. "In the same area" means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered used as a recreational or transient vessel;

(ii) The city or county jurisdiction, through local ordinance or policy, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is moored;

(iii) The operator of the facility where the vessel is moored, through the moorage agreement, billing statement, or facility rules, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility; or

(iv) The occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes.

~~((+63))~~ (64) "Riparian" means relating to or living or located on the bank of a natural water course, such as a stream, lake or tide-water.

~~((+64))~~ (65) "Scientific reserves" means sites set aside for scientific research projects and/or areas of unusually rich plant and animal communities suitable for continuing scientific observation.

~~((+65))~~ (66) "Second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city (RCW 79.105.060(17)). These boundary definitions represent the general rule; however, exceptions do exist. To determine if shorelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

~~((+66))~~ (67) "Second class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city and between the line of ordinary high tide and the line of extreme low tide (RCW 79.105.060(18)). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide is the waterward boundary. To determine if the tidelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

~~((67))~~ (68) "Shore" means that space of land which is alternately covered and left dry by the rising and falling of the water level of a lake, river or tidal area.

~~((68))~~ (69) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under department agreement by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources (RCW 79.105.060(20)).

~~((69))~~ (70) "Statewide value." The term statewide value applies to aquatic land uses and natural resources whose use, management, or intrinsic nature have statewide implications. Such uses and resources may be either localized or distributed statewide. Aquatic land uses of statewide value provide major statewide public benefits. Public use and access, renewable resource use and water-dependent use have been cited by the legislature as examples of such uses. Aquatic land natural resources of statewide value are those critical or uniquely suited to aquatic land uses of statewide value or to environmental quality. For example, wild and scenic rivers, high quality public use beaches and aquatic lands fronting state parks are of statewide value for public use and access. Commercial clam and geoduck beds and sites uniquely suited to aquaculture are of statewide value to renewable resource use. Harbor areas are of statewide value to water-dependent navigation and commerce. Certain aquatic land habitats and plant and animal populations are of statewide value to recreational and commercial fisheries, wildlife protection, and scientific study.

~~((70))~~ (71) "Streamway" means stream dependent corridor of single or multiple, wet or dry channel, or channels within which the usual seasonal or stormwater run-off peaks are contained, and within which environment the flora, fauna, soil and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

~~((71))~~ (72) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers (RCW 79.105.060(21)).

~~((72))~~ (73) "Thread of stream - thalweg" means the center of the main channel of the stream at the natural and ordinary stage of water.

~~((73))~~ (74) "Town" means a municipal corporation of the fourth class having not less than ~~((three hundred))~~ 300 inhabitants and not more than ~~((fifteen hundred))~~ 1,500 inhabitants at the time of its organization (RCW 35.01.040).

~~((74))~~ (75) "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.

~~((75))~~ (76) "Water-dependent use" means use which cannot logically exist in any location but on the water. Examples include, but are not limited to, waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks (RCW 79.105.060(24)).

~~((76))~~ (77) "Waterfront" means a parcel of property with upland characteristics which includes within its boundary, a physical interface with the existing shoreline of a body of water.

~~((77))~~ (78) "Water oriented use" means use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and houseboats (RCW 79.105.060(25)).

~~((78))~~ (79) "Waterway" means an area platted across aquatic lands or created by a waterway district providing for access between the uplands and open water, or between navigable bodies of water.

~~((79))~~ (80) "Wetted perimeter" means a fluctuating water line which separates submerged river beds from the dry shoreland areas at any given time.

NEW SECTION

WAC 332-30-138 Commercial finfish net pen aquaculture. Commercial finfish net pen aquaculture shall not be authorized on state-owned aquatic lands.

WSR 24-20-147
PROPOSED RULES
ENERGY FACILITY SITE
EVALUATION COUNCIL

[Filed October 2, 2024, 11:13 a.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 24-15-134.

Title of Rule and Other Identifying Information: Title 463 WAC, Energy facility site evaluation council (EFSEC).

Hearing Location(s): On November 7, 2024, tentatively at 10 a.m. - 12 p.m. Check our website with a finalized time closer to the hearing date. Virtual Zoom meeting information to be finalized. Check our website closer to the hearing date for access information. If you have difficulty joining the Zoom meeting at the time of the public hearing, please contact us at rulemaking@efsec.wa.gov or 360-930-4085.

Date of Intended Adoption: December 3, 2024.

Submit Written Comments to: Ali Smith, 621 Woodland Square Loop S.E., Olympia, WA 98504, email rulemaking@efsec.wa.gov.

Assistance for Persons with Disabilities: Contact Ali Smith, phone 360-930-4085, email rulemaking@efsec.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes are to bring out-of-date items in 24 of the 26 chapters in Title 463 WAC into alignment with current statutes, rules, and EFSEC's internal operations, including updates to EFSEC's address, corrections to statutory and regulatory references due to changes (e.g., E2SHB 1812 that created EFSEC as an independent agency), and style changes per the code reviser's office style guide. None of the changes are substantive.

Reasons Supporting Proposal: In many cases, the rules have not changed since inception in the 1970s or even since 2004. In that time, EFSEC has moved, and the use of email and websites have come into modern use. Additionally, EFSEC's own statute has changed significantly in some parts, the Public Records Act was recodified, and other statutes, such as the Environmental Health Law Reorganization Act, SHB 2246, were adopted. The rules correct information and references in order to make them simpler for users to navigate.

Statutory Authority for Adoption: RCW 80.50.040(1).

Statute Being Implemented: Chapter 80.50 RCW, Energy Facilities Site Locations Act.

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

Name of Proponent: EFSEC, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa McLean and Ali Smith, P.O. Box 43172, Olympia, WA 98503-3172, 360-930-4085; Implementation: Ami Hafkemeyer, Director of Siting and Compliance, P.O. Box 43172, Olympia, WA 98503-3172, 360-664-1305; and Enforcement: Sonia Bumpus, Director, P.O. Box 43172, Olympia, WA 98503-3172, 360-664-1363.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes clarify items and begin to bring EFSEC into alignment with current day. The proposed rules do not pose any additional costs or changes in cost structures beyond what exists in statute.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

October 1, 2024

Martin McMurry

Director of Administrative Services

OTS-5573.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-010 Purpose. The purpose of this chapter is to describe the council and set out general information on agency operations and implementation of the public records provisions of chapter ((42.17)) 42.56 RCW.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-020 Description of organization. (1) The council is a state agency authorized by chapter 80.50 RCW.

(2) The voting membership of the council consists of directors, administrators, or their designees of the member agencies listed in RCW 80.50.030. In addition, a voting county representative, a voting city representative, and a nonvoting port district representative may sit with the council under the circumstances described in RCW 80.50.030.

(3) The chair is the person appointed by the governor with the advice and consent of the senate to a term coextensive with that of the governor pursuant to RCW 80.50.030.

(a) The chair has a vote on all matters before the council and has an office at the council's office.

(b) Pursuant to RCW 80.50.030, the chair may designate a member of the council to serve as acting chair. The acting chair shall remain entitled to vote on any proposed council action and shall continue to fulfill ~~((his or her))~~ their responsibilities under RCW 80.50.030 (3) through (5).

(c) The chair or a designee executes all official documents, contracts, and other materials on behalf of the council.

(d) The chair or any member of the council may perform such duties as are specifically authorized and directed by the council, not in conflict with RCW 80.50.040.

~~((4) The department of community, trade, and economic development provides administrative services and staff to the council.))~~

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-030 Council office—Business hours. The council office is currently located at ~~((925 Plum Street S.E., Olympia))~~ 621 Woodland Square Loop S.E., Lacey, Washington. It is open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., Saturdays, Sundays, and legal holidays excepted. Notices, applications, business correspondence, or other communication should be sent to the council office. The council's mailing address is P.O. Box 43172, Olympia, WA ~~((98504))~~ 98503-3172.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-050 General method by which operations are conducted.

(1) In general, the council reaches major policy and operational decisions through formal council action at meetings held pursuant to the Open Public Meetings Act (chapter 42.30 RCW), the state Administrative Procedure Act (chapter 34.05 RCW), or other applicable laws.

(2) In some circumstances, the chair may perform duties which are specifically authorized by the council.

(3) ~~((Day-to-day administration is handled by the council manager and staff.))~~ The chair appoints a director to oversee the operations of the council and carry out the duties of council as delegated by the chair.

(4) The council ~~((manager is responsible for implementing the decisions of the council and for directing the staff that supports))~~ director employs and has supervisory authority over such administrative and professional personnel as may be necessary to perform the administrative work of the council.

(5) The council staff shall assist applicants in identifying issues presented by the application, review all information submitted, and recommend resolutions to issues in dispute that would allow site approval, and may make recommendations to the council.

(6) The council staff are not parties to adjudicative proceedings conducted under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-060 How to obtain public records. (1) All public records of the council are available for public inspection and copying at the council office, during regular business hours, in accordance with chapter ((42.17)) 42.56 RCW and these rules, except as otherwise provided by law.

(2) The public may request public records through the following mechanisms:

(a) Mail. Requests by mail shall be addressed to the council's mailing address: The Energy Facility Site Evaluation Council, P.O. Box 43172, Olympia, WA ((98504)) 98503-3172. The front of the envelope shall conspicuously state: "Public Records Request."

(b) Email. ((As of the date these rules are promulgated,)) The council's email address for public records requests is: ((efsec@ep.cted.wa.gov)) records@efsec.wa.gov. This email address may change without notice. The subject line of email requests shall state: "Public Records Request." Requesting records via email is the council's preferred method for tracking and efficiency purposes.

(c) In person. In-person requests shall be made at the council's office, ((925 Plum Street S.E., Olympia)) 621 Woodland Square Loop, S.E., Lacey, Washington, or as such office may subsequently be relocated, during regular business hours.

(d) Fax. Faxed requests shall be accompanied by a cover sheet that conspicuously states: "Public Records Request."

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-070 Public records officer. The council's public records officer is the council ((manager)) director, or designee, who is responsible for implementation of these and other applicable regulations regarding public records.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-080 Contents of requests for public records. Chapter ((42.17)) 42.56 RCW requires the council to prevent invasions of privacy, protect public records from damage or disorganization, prevent excessive interference with its essential functions, and prevent unreasonable disruptions of operations. Accordingly, the public may inspect and copy public records upon compliance with the following procedures:

(1) A member of the public who seeks a public record shall make a written request. The purpose of requiring written requests is to assist the council in tracking, managing, and responding to the request in a timely and orderly fashion.

(2) No particular form of writing is required so long as the request complies with WAC 463-06-060 and contains the following information:

- (a) Name (~~(, mailing address, and telephone number)~~) and contact information of the requesting party;
- (b) The date on which the written request is made;
- (c) Identification of the record requested with sufficient particularity that the council can identify the record and make it available. Such identifying information should, if possible, include the title, subject matter, and date of the record;
- (d) A signed statement that the records will not be used for commercial purposes if a list of individuals is being requested, or for any use prohibited by law; and
- (e) A prominent statement that the request is being made pursuant to chapter ~~((42.17))~~ 42.56 RCW and these regulations.
- (3) To facilitate processing the request, the requesting party should also include:
- (a) ~~((Either a fax number or))~~ Contact information, such as an email address ((or both)).
- (b) A reference to the record as it is described in the current public record index maintained by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-110 Copying and fees. ~~((1) Copying. The council shall make copies on the council's copy equipment when doing so will not unreasonably disrupt the council's operations or cause excessive interference with other essential functions. If it is determined that making copies will disrupt the council's operations, an alternative schedule will be developed, or other arrangements for copying will be made.~~

~~(2) Fees.~~

- ~~(a) The council shall not impose a fee for locating documents, for making them available, or for inspection of records by the public.~~
- ~~(b) The council may charge up to fifteen cents per page fee for copies of public records provided.~~
- ~~(c) The council, at its option, shall not provide copies unless the associated fees have been paid in full prior to delivery of documents; provided that this advance payment requirement shall not apply to other government agencies or tribes or to parties or intervenors in proceedings before the council.)~~ The council will charge to provide copies of public records as provided in this section.

(1) Adoption of statutory copying charges. The council has not calculated the actual costs for copying its records because to do so would be unduly burdensome for the following reasons:

- (a) The council has insufficient resources to conduct a comprehensive study to determine the actual costs of copying its records;
- (b) To conduct a study of the council's actual copying costs would interfere with other essential agency functions; and
- (c) The legislature has established reasonable fees and costs in RCW 42.56.120 after the public and requestors have commented on, and been informed of, such fees and costs.

To timely implement a fee schedule consistent with the Public Records Act, it is more cost-efficient and expeditious and in the public interest for the council to adopt the legislature's approved fees and costs for most of the council's records, as authorized in RCW

42.56.120 and as published in the council's fee schedule and available on the council's website at <https://efsec.wa.gov>.

(2) **Fee schedule.** Persons may obtain the schedule of the council's copying charges by contacting the council's records office at records@efsec.wa.gov. The council does not charge sales tax on copies it makes at its own facilities.

(3) **Cost estimates.** Upon request, the council will provide a requestor with a summary of the applicable charges before the council makes copies of the requested records. The requestor may revise the request to reduce the requested number of copies and correspondingly reduce the copying charges.

(4) **Deposits and prepayment.** Before beginning to make copies, the public records officer may require a requestor to pay a deposit of up to 10 percent of the estimated costs of copying all the requested records. The public records officer may also require the requestor to pay the remainder of the copying costs before providing all the records, or to pay the costs of copying an installment before providing that installment.

(5) **Waiver or other fee arrangements.** The council may waive copying charges. The council also may enter into a contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges or in response to voluminous or frequently occurring requests.

(6) **Mailing and delivery costs.** The council may charge the actual costs it incurs to mail or use a commercial carrier to deliver copies of the requested public records, including the cost of any digital storage medium or device on which the council copies the records (such as a disc or flash drive), the shipping container or envelope, and the postage or delivery charge.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-120 Disclosure procedure. (1) In accordance with RCW ((42.17.320)) 42.56.520, within five business days of receiving a public records request, the council shall respond by:

(a) Providing the records;

(b) Providing an internet address and link on the council's website to the specific records requested, except that if the requestor notifies the council that they cannot access the records through the internet, then the council must provide copies of the record or allow the requestor to view copies using an agency computer;

(c) Acknowledging the council has received the request and providing a reasonable estimate of the time the council will require to respond; ((e))

((e)) (d) Requesting clarification from the requestor if the request is unclear or does not sufficiently identify the requested records. If the requestor does not respond to the council's request for clarification, the public records officer or designee need not respond to the public records request and may consider the request closed; or

(e) Denying the record request, as set out in subsection (4) of this section.

(2) The council shall review the requested public records prior to disclosure.

(3) If the records do not contain materials exempt from public disclosure, the council shall disclose the records.

(4) If the records contain materials exempt from public disclosure, the council shall deny disclosure of the exempt materials and disclose any remaining, nonexempt materials. At the time of denial, the council shall clearly specify in writing the reasons for denial, including a statement of the specific exemptions or reason for denial of disclosure.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-170 Records index. The council shall maintain and make available for public inspection an index of those classes of records described in RCW ((42.17.260)) 42.56.070. The index is available for public inspection and copying.

(1) Form and content. The index shall be maintained in electronic form with copies available on paper. The index shall contain topic headings.

(2) Location and availability. The index shall be available to the public under the same rules and on the same conditions as are applied to other public records.

(3) Schedule for revisions and updates. The council shall revise and update the index annually.

OTS-5580.1

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-10-010 Definitions. Except where otherwise indicated in the following chapters, the following terms have the meaning shown:

(1) "Council" means the energy facility site evaluation council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the council.

(2) "Applicant" means ((the)) any person ((or entity making)) who makes an application for ((a)) site certification ((or permit covered by this title)) pursuant to the provisions of this chapter.

(3) "Adjudicative proceeding" means a proceeding conducted pursuant to RCW 80.50.090((+3)) (4) and the state Administrative Procedure Act.

(4) "Certificate holder" means a person or entity who is signatory to a site certification agreement, which has been signed by the governor, and who is bound by its terms.

(5) "Chair" means the person appointed by the governor pursuant to RCW 80.50.030.

(6) "~~((Council manager))~~ Director" means the individual who ~~((handles day-to-day administration for the council, administers the decisions of the council, and directs the staff that supports the council))~~ oversees the operations of the council, carries out the du-

ties of the chair as delegated by the chair, and employs and exercises supervisory authority over all staff of the council.

(7) "Energy facility" (~~((includes electrical))~~) means an energy plant or transmission facilities under RCW 80.50.020((+8)) (13) and 80.50.020(29) and ((alternative energy resources)) clean energy product manufacturing facilities under RCW 80.50.020((+18)) (7).

(8) "Site certification agreement (SCA)" means the agreement between the state of Washington and the applicant that prescribes the conditions required for construction and operation of an energy facility.

(9) "Rule" as used herein, includes the terms "agency order," "directive" or "regulation" in accordance with RCW 34.05.010(16).

OTS-5581.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-14-030 Public meetings and hearings policy for application reviews. The council encourages, and will provide for, public participation in its public meetings and hearings during reviews of applications for site certification as afforded by law and rule. The following sets forth the public participation in those meetings and hearings required in RCW 80.50.090.

(1) The (~~(public))~~) informational public hearing as prescribed in RCW 80.50.090(1) shall be held in the county of the proposed site. All persons shall be afforded an opportunity to comment to the council regarding the proposed site.

(2) The public land use consistency hearing as prescribed in RCW 80.50.090(2) shall be held in the county where the proposed site is located to determine whether or not the proposed use of the site is consistent and in compliance with city, county, or regional land use plans and zoning ordinances at the time of application. If the proposed site is located in more than one county, a land use consistency hearing shall be held in each county. The council shall limit public testimony at this hearing to the issue of consistency and compliance with city, county, or regional land use plans and zoning ordinances.

(3) Although all persons desirous of participating may not be accorded "party" status in the public hearing held as an adjudicative proceeding under chapter 34.05 RCW prior to preparation of any recommendation to the governor, the council, at times and places designated by the council, upon compliance with reasonable procedures, shall allow any person desiring to be heard to speak in favor of or in opposition to the proposed site by raising one or more specific issues, provided that the person has raised the issue or issues in writing with specificity during the application review process or during the public comment period held prior to the start of the adjudicative hearing.

(4) The council views the provisions of RCW 80.50.090(4) as authorizing it to conduct additional public hearings as "public informational hearings," "public land use consistency hearings" or "adjudicative proceedings." The council may also hold public meetings concerning the application for site certification.

AMENDATORY SECTION (Amending WSR 78-09-078, filed 8/28/78)

WAC 463-14-040 County, city, and port district representatives—Segmentation of hearings and issues. RCW 80.50.030 (4), (5), and (6) necessitate segmentation of hearings and issues in instances where proposed energy facilities would extend beyond the boundaries of a single county, city, and/or port district.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-14-050 Preemption. Chapter 80.50 RCW operates as a state preemption of all matters relating to the certification of the location, construction, and operational conditions of certification of the energy ((facility sites)) facilities included under RCW 80.50.060 as now or hereafter amended. Chapter 80.50 RCW certification is given in lieu of any permit, certificate, or similar document (~~which might otherwise be~~) required by (~~state agencies and local governments~~) any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-14-080 EFSEC deliberative process. RCW 80.50.100 requires the council to report to the governor its recommendation of approval or rejection of an application for certification. In order for the council to develop such a recommendation, it shall use wherever applicable the following deliberative process:

(1) Evaluate an application to determine compliance with chapter 80.50 RCW and chapter 463-60 WAC;

(2) Contract for an independent consultant study (~~of the application~~) to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate approval of the site;

(3) Conduct a review under (~~the~~) chapter 43.21C RCW, State Environmental Policy Act;

(4) Conduct an adjudicative proceeding for the presentation of evidence on the application;

(5) Conduct one or more sessions for the taking of public testimony concerning the proposed project;

(6) Consider public comments received;

(7) Consider any laws or ordinances, rules or regulations, which may be preempted by certification.

The council, when fully satisfied that all issues have been adequately reviewed, will consider and by majority decision will (~~act on the question of approval or rejection of an~~) make a council recommendation as to the disposition of the application.

OTS-5582.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-18-020 Governing procedure. The following procedures shall apply to proceedings under the Open Public Meetings Act, chapter 42.30 RCW, and rule-making proceedings under the Administrative Procedure Act, chapter 34.05 RCW:

(1) A majority of the voting council members constitutes a quorum for the conduct of council business.

(2) All council decisions shall be transacted by motion. Motions may be made by any council member and shall require a second.

(3) Voting on all motions shall be by voice vote unless a division is called for, in which case the chair shall call the roll by agency and record the votes of each voting member present, "yea" or "nay."

(4) The order of business shall be conducted as prescribed by the agenda.

(a) The (~~council manager~~) director shall prepare each meeting's agenda in consultation with the chair.

(b) The council may modify a meeting's agenda.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-18-050 Open Public Meetings Act proceedings. The following requirements apply to those portions of the council's business that fall within the scope of the Open Public Meetings Act, chapter 42.30 RCW:

(1) Other than executive sessions, the council's meetings are open to the public.

(2) Regular meetings. Because the council does not hold meetings in accordance with a periodic schedule declared by statute or rule, the council's meetings are not "regular meetings" within the meaning of the Open Public Meetings Act.

(3) Special meetings.

(a) The chair or a majority of the voting members of the council may call a special meeting at any time in accordance with RCW 42.30.080 by delivering written notice personally (~~(or)~~), by mail, or by email to each council member; and to each local newspaper of general circulation and to each local radio or television station which has on file a written request to be notified of such special meeting or of all special meetings.

(b) Such notice must be delivered personally (~~(or)~~), by mail, or by email and posted on the agency's website at least (~~(twenty-four)~~) 24 hours before the time of such meeting as specified in the notice.

(c) The call and required notices shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.

(d) Such written notice may be dispensed with (~~(as to any)~~) if a member (who at or prior to the time the meeting convenes files) submits a written waiver of notice with the council (~~(manager a written~~

~~waiver of notice. Such waiver may be given by telegram) director at or prior to the time the meeting convenes. Such written notice may also be dispensed with ((as to any)) if a member who is actually present ((at the meeting)) at the time ((it)) the meeting convenes.~~

~~(e) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, or when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage, or when the required notice cannot be posted or displayed with reasonable safety.~~

~~((b)) (f) In addition to the special meeting notice requirements under RCW 42.30.080 described in ((subsection (4) of)) this section, the council shall, on or before January of each year, fix the time and place of the special meetings it proposes to hold during the upcoming calendar year and publish a schedule of those meetings in the *Washington State Register*. The council need not publish in the Register notice of any change from such meeting schedule although it may, in its discretion, elect to do so. In addition to the scheduled special meetings published in the *Washington State Register*, the council may hold other special meetings without publication in the Register.~~

(4) Executive sessions. The chair or a majority of the voting members of the council may call an executive session at any time in accordance with RCW 42.30.110.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-18-090 Adjudicative proceedings. Adjudicative proceedings required by RCW 80.50.090 ~~((3))~~ (4) shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and chapter 463-30 WAC.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-18-100 Rule-making proceedings. Rule-making proceedings shall be governed by the Administrative Procedure Act, chapters 34.05 RCW and 463-34 WAC.

OTS-5583.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-22-020 Potential site study request—Where submitted. Requests shall be submitted to the energy facility site evaluation council in writing at the council office ~~((in writing))~~, by mail, or by email.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-22-030 Potential site study—Fee. An initial fee of \$10,000 shall accompany the study request and shall be a condition precedent to any action by the council. Payment shall be ~~((made by a cashier's check payable to the state treasurer))~~ deposited into the council's account created in RCW 80.50.390.

AMENDATORY SECTION (Amending Order 106, filed 11/4/76)

WAC 463-22-070 Independent consultant study—No preliminary approval. Nothing stated or recommended by the consultant, either during the study stage or in its report, shall be interpreted as a preliminary ~~((approval or disapproval))~~ recommendation as to the disposition of the application of the potential site by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-22-100 Public information meeting. During the potential site study, the council may hold a public information meeting in the county or counties within whose boundaries the site of the proposed energy facility is located, or as close to the proposed site as practicable. The council shall publish notice of the meeting in local daily or weekly news publications, as well as on the council's website. This public information meeting shall not be in lieu of the requirements of RCW 80.50.090.

OTS-5584.1

**Chapter 463-26 WAC
((PUBLIC)) INFORMATIONAL PUBLIC MEETING AND LAND USE HEARING**

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-010 Purpose. This chapter sets forth the procedures to be followed in the conduct of ~~((the public))~~ an informational ((meeting)) public hearing pursuant to RCW 80.50.090(1) and as described in WAC 463-26-025, and the public land use hearing held pursuant to RCW 80.50.090(2).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-020 Notification of local authorities. Before conducting either the informational public (~~((informational meeting))~~) hearing under RCW 80.50.090(1) or the public land use hearing under RCW 80.50.090(2), the council will notify the legislative authority in each county, city, and port district within whose boundaries the site of the proposed energy facility is located.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-025 ((Public)) Informational ((meeting)) public hearing. The council shall conduct at least one informational public (~~((informational meeting))~~) hearing concerning each application. At this ~~((meeting))~~ hearing, the council will present the general procedure to be followed in processing the application including a tentative sequence of council actions, the rights and methods of participation by local government in the process, and the means and opportunities for the general public to participate.

(1) The applicant shall make a presentation of the proposed project utilizing appropriate exhibits. The presentation shall include: A general description of the project and the proposed site; reasons why the proposed site or location was selected; and a summary of anticipated environmental, social, and economic impacts.

(2) The general public shall be afforded an opportunity to present written or oral comments relating to the proposed project. The comments may become part of the adjudicative proceeding record.

(3) The informational ~~((meeting))~~ public hearing shall be held in the general proximity of the proposed project as soon as practicable within ~~((sixty))~~ 60 days after receipt of an application for site certification.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-035 Introduction of counsel for the environment. The council shall invite the counsel for the environment to be present at the informational public (~~((informational meeting))~~) hearing. Counsel for the environment shall be introduced and afforded an opportunity to explain ~~((his or her))~~ their statutory duties under chapter 80.50 RCW.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-050 Purpose ~~((for))~~ of land use hearing. At the commencement of the public land use hearing, the council shall explain that the purpose of the hearing under RCW 80.50.090(2) is to determine whether at the time of application the proposed facility was consistent and in compliance with land use plans and zoning ordinances. Pur-

suant to RCW 80.50.020(~~((15))~~) (18), "land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government under chapter(~~(s)~~) 35.63, 35A.63, (~~(e)~~) 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007. Pursuant to RCW 80.50.020(~~((16))~~) (30), "zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter(~~(s)~~) 35.63, 35A.63, (~~(e)~~) 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007.

OTS-5585.1

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-28-010 Purpose. This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt land use plans, zoning ordinances, or other development regulations for a (~~(site)~~) project or portions of a (~~(site for an energy facility, or alternative energy facility)~~) project for energy facilities included under RCW 80.50.060 as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 78-07-036, filed 6/23/78)

WAC 463-28-020 Authority of council—Preemption by state. The authority of the council is contained in RCW 80.50.040(1) and 80.50.110(2) which provides that the state preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-28-060 Adjudicative proceeding. (1) Should the council determine under WAC 463-26-110 a (~~(site)~~) project or any portions of a (~~(site)~~) project is inconsistent, it will schedule an adjudicative proceeding under chapter 463-30 WAC to consider preemption.

(2) The proceeding for preemption may be combined or scheduled concurrent with the adjudicative proceeding held under RCW 80.50.090(~~((3))~~) (4).

(3) The council shall determine whether to recommend to the governor that the state preempt the land use plans, zoning ordinances, or other development regulations for a (~~(site)~~) project or portions of a (~~(site)~~) project for the energy (~~(facility or alternative energy resource)~~) facilities included under RCW 80.50.060 as now or hereafter amended proposed by the applicant.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-28-070 Certification—Conditions—State/local interests.

If the council approves the request for preemption, it shall include conditions in the draft certification agreement (~~(which consider)~~) to protect state (~~(or)~~), local governmental, or community interests, or overburdened communities as defined in RCW 70A.20.010 affected by the construction or operation of the (~~(energy)~~) facility (~~(or alternative energy resource)~~) and to recognize the purpose(~~(s)~~) of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted pursuant to RCW 80.50.110(~~(+2)~~) as now or hereafter amended.

OTS-5586.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-060 Definitions—Persons and parties. The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020(~~(+3)~~) (19). The term "party" shall mean and be limited to the following:

- (1) The "applicant" as defined in RCW 80.50.020(~~(+1)~~) (2).
- (2) Each "member agency" as specified in RCW 80.50.030 (3) through (6).
- (3) The "counsel for the environment" as defined in RCW 80.50.020(~~(+12)~~) (10).
- (4) Each person admitted to an adjudicative proceeding as an "intervenor(~~(+7)~~)" is a party only for the purposes, and is subject to any limitations and conditions, specified in the council order granting intervention.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-080 Commencement of adjudicative proceedings. Adjudicative proceedings shall commence upon issuance of a formal notice of hearing or prehearing conference. The notice shall be served upon all parties at least (~~(twenty)~~) 20 days in advance of the initial hearing date, unless the council finds that an emergency exists requiring the hearing or prehearing conference to be held upon less notice.

The time and place of continued hearing sessions may also be set:

- (1) Upon the record without further written notice to the parties; or
- (2) By letter from the council (~~(manager)~~) director; or
- (3) By letter from the presiding officer.

In such instances, (~~(twenty)~~) 20 days' prior notice is not required.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-090 Publicity—Commencement of adjudicative proceedings. Upon the filing of an application for certification, the council shall prepare an appropriate statement for dissemination to the news media which shall: (1) Describe all actions taken to date regarding the proposed ((site)) project, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed ((site)) project to be certified and that advance notice within a reasonable time shall be required of persons who desire status as intervenors in accordance with WAC 463-30-091.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-093 Participation by county, city, and port district representatives. In any adjudicative site certification proceeding, designated council members representing local jurisdictions may discuss and, if authorized, vote only on issues affecting their jurisdictions. Issues shall be separated for purposes of discussion and voting.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-120 Format, filing, and service of documents. (1) Format.

(a) All pleadings, motions, and other documents (including pre-filed testimony) filed with the council shall be legibly written or printed. The use of letter size paper (8 1/2 by 11 inches) is mandatory. The writing or printing shall appear on two sides of the page.

(b) The requirements of (a) of this subsection are not mandatory for exhibits but the use of exhibits that comply with (a) of this subsection is encouraged if it does not impair legibility.

(2) Filing.

(a) In each case, the council will specify the number of copies required for motions, related pleadings, and exhibits which must be filed with the council.

(b) Document shall be deemed filed only upon actual receipt by the council ((manager)) director or designee during office hours.

(c) Faxes.

(i) As used in this rule, "fax" means electronic telefacsimile transmission.

(ii) Except as specified in (c)(iii) of this subsection, receipt of a document in the council's fax machine does not constitute filing.

(iii) For good cause shown, a party may request and the council ((manager)) director or designee may in his or her sole discretion grant authority to file a document by fax.

(iv) Filing by fax is perfected when a complete legible copy of the document is reproduced on the council ((manager's)) director's fax machine during the council's normal office hours, so long as the coun-

cil receives the required number of nonfaxed originals on the next successive business day. If a transmission of a document by fax commences after the council's normal office hours, the document shall be filed on the next successive business day.

(v) Any document filed by fax must be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the document relates, and indicating the date faxed and total number of pages included in the transmission.

(vi) The party attempting to file a document by fax bears the risk that the document will not be timely received or legibly printed, regardless of the cause. If a fax is not received in legible form, it will be considered as if it had never been sent.

(d) Email. The filing of documents with the council by electronic mail is not authorized without the express approval of the council (~~(manager)~~) director or designee and under such circumstances as the council (~~(manager)~~) director or designee allows.

(e) Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.

(f) Applications. Applications for a site certificate shall be filed in the manner prescribed by the rules governing such applications.

(3) Service.

(a) A copy of each pleading, motion, and document filed with the council shall be simultaneously served upon each party.

(b) Service by parties.

(i) Service of pleadings, motions, and other documents by parties shall be made by delivering one copy to each party (A) in person, (B) by mail, (C) by commercial parcel delivery company, or (D) for documents not exceeding (~~(twenty-five)~~) 25 pages, if authorized by the council (~~(manager)~~) director or designee, by fax, where originals are mailed simultaneously.

(ii) Except as otherwise provided, when any party has appeared by attorney or other authorized representative, service upon such attorney or representative will be deemed valid service upon the party.

(iii) Service of documents shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the fax machine of a confirmation of transmission by fax, with simultaneous deposit of the originals in the United States mail, properly addressed with appropriate first-class postage prepaid.

(c) Service by the council. All notices, orders and other documents required to be served by the council may be served by delivery of one copy to each party (i) in person, (ii) by mail, (iii) by electronic mail, (iv) by commercial parcel delivery company, or (~~(iv)~~) (v) by fax, when originals are mailed simultaneously. Service of documents by the council shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the council's fax machine of a confirmation of the transmission by fax, with simultaneous deposit of the originals

in the United States mail, properly addressed with appropriate first-class postage prepaid.

(d) Certificate of service. There shall appear on or in a separate document accompanying the original of every pleading when filed with the council in accordance with this subsection, either an acknowledgment of service, or the following certificate:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120(3).

Dated at this day of
(signature)

(4) Courtesy copies. Parties are encouraged to send courtesy copies of documents to the council and all other parties via electronic mail.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-200 Subpoenas—Practice. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under (~~his or her~~) their control at the time and place set for the hearing.

(3) A subpoena may be served by any suitable person over (~~eighteen~~) 18 years of age, by exhibiting and reading it to the witness, or by giving (~~him or her~~) them a copy thereof, or by leaving such copy at the place of (~~his or her~~) 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.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the council or any member of the council staff. For these purposes, the council's independent consultant is deemed a member of the council staff.

(6) The council shall be responsible for paying only the witness fees of the witnesses which it subpoenas. Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-230 Official notice. (1) Upon written or oral motion, the council may officially notice:

- (a) Any judicially cognizable facts;
- (b) Technical or scientific facts within the council's specialized knowledge; 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.

(2) 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.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-251 Alternative dispute resolution. The council supports parties' informal efforts to resolve disputes when doing so is lawful and consistent with the public interest. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part.

(1) Forms of ADR. Parties may agree to negotiate with other parties at any time without council oversight. The council may direct parties to meet or consult as provided in subsection (2) of this section, or may establish or approve a collaborative process as provided in subsection (3) of this section. The council may assign a mediator or facilitator to assist the parties. The council may also assign an arbitrator whose decision is subject to council review.

(2) Settlement conference. The council may invite or direct the parties to confer among themselves or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties.

(3) Collaborative.

(a) (~~Defined; membership.~~) Definition. A collaborative is a form of ADR and is a council-sanctioned negotiation in which interested parties work with each other and representatives of council staff to achieve consensus on one or more issues assigned by the council or identified by the collaborative participants.

(b) Membership. Any interested party whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the council and seek approval if a collaborative changes its membership or redefines the issues it will address.

(~~(b)~~) (c) Communication with council. Communication between the council and collaborative participants may be through council staff assigned to serve as a third-party neutral in the collaborative, or through the council (~~manager~~) director, subject to agreement among the participants to the form and substance of any such communication.

(4) ADR guidelines. In any ADR process, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider any guidelines or directions by the council((~~r~~)) and determine the ground rules governing the negotiations;

(b) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the council without the consent of the participants or unless necessary to address the process of the negotiations;

(c) To the extent permitted by law, parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential as provided in a council protective order; and

(d) Participants in a council-sanctioned ADR process must periodically advise any nonparticipating parties and the council of any substantial progress made toward settlement. Participants must immediately advise the council if a council-sanctioned ADR process is without substantial prospects of resolving the issue or issues under negotiation.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-270 Prehearing conference. (1) The council upon its own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

(a) Simplification of issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the examination of witnesses;

(e) Procedural matters;

(f) Distribution of written testimony and exhibits to the parties prior to the hearing;

(g) The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC 463-30-091 may be ruled upon at a prehearing conference;

(h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the council.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties concerning all of the matters considered, and other matters as appropriate. If no objection to the order is filed within ((~~ten~~)) 10 days after the date the order is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding, the council may conduct a conference prior to the taking of testimony, or may recess the hearing for such confer-

ence, for the purpose of carrying out the purpose of this section. The council shall state on the record the results of such conference.

(5) Nothing in this section shall be construed to limit the right of the council to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

AMENDATORY SECTION (Amending WSR 98-01-083, filed 12/12/97, effective 1/12/98)

WAC 463-30-300 Hearing schedule guidelines. In any adjudicative site certification proceeding the council shall, after consultation with the parties, schedule the hearing process so that the following general subject areas may be heard separately at specified times, to the extent they are in issue:

- (1) The description of the particular ~~((energy facility and the proposed site.))~~ project;
- (2) Consistency of the proposal with zoning and land use regulations ~~((--))~~ ;
- (3) Physical site suitability and related safety considerations ~~((--))~~ ;
- (4) NPDES, PSD, or other permits ~~((--))~~ ;
- (5) On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric ~~((--))~~ ;
- (6) On-site and local impacts (societal): Such as housing, services, recreation, economics, transportation, health, and tax base ~~((--))~~ ;
- (7) Peripheral area impacts (all categories) ~~((--))~~ ;
- (8) Adverse impacts minimization and consideration of conditions of certification.

At the commencement of the hearing, the council shall publicly announce the proposed schedule by which the hearing is to be conducted. The council may alter the schedule.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-335 Petition for reconsideration of recommendations to the governor. A petition for reconsideration of a recommendation to the governor shall be filed with the council ~~((manager))~~ director.

(1) The petition for reconsideration shall be filed with the council within ~~((twenty))~~ 20 days of the date of service of the recommendation to the governor, unless a different place and time limit for filing the petition are specified in the recommendation to the governor in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

(2) The petition for reconsideration shall specify the challenged portions of the recommendation to the governor and shall refer to the evidence of record and legal authority which is relied upon to support the petition.

(3) Any party may file an answer to a petition for reconsideration. The answer shall be filed with the council manager within ~~((fourteen))~~ 14 days after the date of service of the petition and

copies of the answer shall be served upon all other parties or their representatives at the time the answer is filed.

OTS-5587.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-34-060 Petitions for rule making—Disposition. In accordance with RCW 34.05.330 and WAC 82-05-040, within ~~((sixty))~~ 60 days after receipt of the petition, the council shall either initiate rule-making proceedings or deny the petition in writing, stating its reasons for the denial ~~((, and serve petitioner with a copy, or initiate rule-making proceedings))~~ and specifically addressing the concerns stated in the petition. Where appropriate, the council may indicate alternative means by which the agency will address the concerns raised in the petition.

OTS-5588.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-020 Standard application required. An applicant seeking expedited processing shall submit an application for ~~((site))~~ certification of any facility pursuant to chapter 80.50 RCW, fees, and a request for expedited processing as required by RCW 80.50.075.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-025 Environmental checklist required. An applicant seeking expedited processing shall submit a completed SEPA environmental checklist with an application for ~~((site))~~ certification unless the council finds the proposal is categorically exempt.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-030 Eligible proposals. An application may be expedited when the council finds:

(1) The environmental impact of the proposed ~~((energy))~~ facility is not significant or will be mitigated to a nonsignificant level under the State Environmental Policy Act, chapter 43.21C RCW; and

(2) The project is found to be consistent and in compliance with city, county, or regional land use plans or zoning ordinances.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-040 Prior to making a determination of eligibility for expedited processing. (~~The council~~) Prior to making a determination of eligibility for expedited processing, the council shall:

(1) Conduct (~~a public~~) an informational (~~meeting~~) public hearing in the county of the proposed (~~site~~) facility within (~~sixty~~) 60 days of receipt of an application to provide information to the public concerning the nature and purpose of the (~~energy~~) facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views;

(2) Determine at a public hearing within (~~sixty~~) 60 days of receipt of an application if the proposed site is consistent and in compliance with city, county, or regional land use plans and zoning ordinances;

(3) Review the application pursuant to WAC 463-43-030; in making its review, the council may engage pursuant to RCW 80.50.071 (1) (~~a~~) an independent consultant to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council; and

(4) If applicable, initiate processing of:

(a) A NPDES application in accordance with chapter 463-76 WAC;

(b) An air emissions or PSD permit application in accordance with 463-78 WAC;

(c) Other such authorizations or permits as may be required by law or rule and necessary for construction and operation of the project.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-050 Expedited processing determination. Following the review of an application, environmental checklist, and land use hearing and within (~~one hundred twenty~~) 120 days of receipt of an application or such later time as is mutually agreed by the applicant and the council, the council by order will grant expedited processing for an application when it has found that:

(1) The proposed site is consistent and in compliance with city, county, or regional land use plans (~~r~~) and zoning ordinances; and

(2) The environmental impacts are not significant or may be mitigated to nonsignificant level under RCW 43.21C.031.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-060 Effect of expedited processing. For an application granted expedited processing under WAC 463-43-050, the council shall not:

- (1) Conduct any further review of an application by an independent consultant; however, at the direction of the council an independent consultant may prepare air or water discharge permits or other ancillary permits or studies that may be needed as part of a recommendation to the governor;
- (2) Hold an adjudicative proceeding under chapter 34.05 RCW; and
- (3) Continue an adjudicative proceeding that has commenced.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-070 Expedited application processing. The council will prescribe the form, content, and necessary supporting documentation for site certification during council meetings. All interested persons and the counsel for the environment shall be afforded an opportunity to make presentations on the matters herein.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-080 Recommendation—Transmittal to governor. Within ((sixty)) 60 days following the granting of expedited processing or such later time as is mutually agreed by the applicant and the council, the council shall forward its recommendation, and if the recommendation is for approval, the council will also forward a copy of a draft site certification agreement to the governor.

OTS-5589.1

AMENDATORY SECTION (Amending WSR 84-19-031, filed 9/14/84)

WAC 463-47-050 Designation of decision maker. Within the energy facility site evaluation council, the decision maker is the council.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-47-051 Designation of responsible official. Within the energy facility site evaluation council, the responsible official is the council ((manager)) director.

AMENDATORY SECTION (Amending WSR 84-19-031, filed 9/14/84)

WAC 463-47-080 Mitigated DNS. (1) An applicant may ask the council whether issuance of a DS is likely for a proposal. This request for early notice must:

- (a) Be written;
 - (b) Follow submission of an application and environmental checklist for a nonexempt proposal for which the council is lead agency; and
 - (c) Precede the council's actual threshold determination for the proposal.
- (2) The council shall respond to the request within (~~ten~~) 10 working days of receipt of the letter; the response shall:
- (a) Be written;
 - (b) State whether the council is considering issuance of a DS;
 - (c) Indicate the general or specific area(s) of concern that led the council to consider a DS; and
 - (d) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The council shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the council will make its threshold determination based on the changed or clarified proposal.

(a) If the council's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the council shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC (~~(197-11-350)~~) 197-11-340(2).

(b) If the council indicated general or specific areas of concern(~~(7)~~) but did not indicate specific mitigation measures that would allow it to issue a DNS, the council shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The council may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the council shall issue a DNS and circulate it for review (~~(under)~~) as in WAC (~~(197-11-350)~~) 197-11-340(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the council may require the applicant to submit a new checklist.

(7) The council may change or clarify features of its own proposals before making the threshold determination.

(8) The council's written response under subsection (2) of this section shall not be construed as a determination of significance. In

addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the council to consider the clarifications or changes in its threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other approval. Unless the council's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-47-090 EIS preparation. (1) Preparation of draft and final EISs, supplemental EISs (SEISs), or addenda is the responsibility of the council. The responsible official shall be satisfied that these documents comply with these rules and chapter 197-11 WAC prior to issuance.

(2) The council has the following options for draft and final EISs, SEISs, or addenda preparation:

(a) The council prepares its own documents.

(b) The council's independent consultant prepares any or all of the documents under the supervision of the responsible official.

(c) The council requires the applicant to prepare the documents with oversight from the responsible official.

(3) If the council prepares its own draft and final EISs, SEISs, or addenda, or its independent consultant prepares them, the council can require an applicant to provide information that the council or independent consultant does not possess, including specific investigations.

(4) The applicant shall bear the expense of the draft and final EISs, SEISs, or addenda preparation, but the consultant will work directly for the council.

(5) Normally, the council will have the documents printed and distributed.

(6) Whenever someone other than the council prepares a draft or final EISs, SEISs, or addenda, the responsible official:

(a) May direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Shall initiate and coordinate scoping, ensuring that the individuals preparing the documents receive all substantive information submitted by any agency or person.

(c) Shall assist in obtaining information on file with other agencies that is needed by the persons preparing the document.

(d) Shall allow the person preparing the document access to council records relating to the document (under chapter ((42.17)) 42.56 RCW—Public ((disclosure and public)) Records ((law)) Act).

AMENDATORY SECTION (Amending WSR 84-19-031, filed 9/14/84)

WAC 463-47-100 Public notice requirements. (1) The council shall give public notice when issuing a DNS under WAC (~~(197-11-350(2))~~) 197-11-340, a scoping notice under WAC (~~(173-802-090)~~) 197-11-360, or a draft EIS under WAC 197-11-455.

(2) Whenever possible, the council shall integrate the public notice required under this section with existing notice procedures for the council's review of an application.

(a) When more than one permit required from the council has public notice requirements, the notice procedures that would reach the widest audience should be used, if possible.

(b) If the public notice requirements for the permit or certification must be completed at a specific time in the permitting process and that timing does not coincide with the timing requirements for SE-PA public notice, the council must use one or more public notice methods in subsection (4) of this section.

(c) If there are no public notice requirements for any of the permits required for a proposal, the council must use one or more public notice methods in subsection (4) of this section.

(3) The council may require an applicant to perform the public notice requirement at his or her expense.

(4) The council shall use one or more of the following methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or certification required from the council and, public interest expressed in the proposal:

(a) Mailing to persons or groups who have expressed interest in the proposal, that type of proposal, or proposals in the geographic area in which the proposal will be located, constructed and operated if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be located, constructed, and operated; and/or

(c) Posting the property, for site specific proposals.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-47-110 Policies and procedures for conditioning or denying permits or other approvals. (1) (a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions.

(b) The council shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The council recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The council shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

(2) (a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether:

(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(b) The council may:

(i) Condition the approval or recommendation for approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Reject or recommend rejection of the application if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning, denying or recommending permits, or rejecting applications.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-47-140 Responsibilities of the council's responsible official. The EFSEC (~~(manager)~~) director shall be responsible for the following:

(1) Coordinating activities to comply with SEPA and encouraging consistency in SEPA compliance.

(2) Providing information and guidance on SEPA and the SEPA rules to council, council staff, groups, and citizens.

(3) Reviewing SEPA documents falling under council interests and providing the department of ecology with comments.

(4) Maintaining the files for EISs, DNSs, (~~and~~) scoping notices, and related SEPA matters.

(5) Writing and/or coordinating EIS preparation, including scoping and the scoping notice, making sure to work with interested agencies.

(6) Publishing and distributing its SEPA rules and amending its SEPA rules, as necessary.

(7) Fulfilling the council's other general responsibilities under SEPA and the SEPA rules.

OTS-5596.1

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-010 Purpose. This chapter sets rules relating to costs or charges for independent consultant studies, regular and expedited application processing, electrical transmission facility preapplication, determining compliance, and potential site studies. ~~((The department of community, trade, and economic development will provide all fiscal services for the council. For the purposes of this chapter "department" shall mean the department of community, trade, and economic development.))~~

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-020 Costs for the independent consultant studies. Pursuant to RCW 80.50.071, a deposit of ~~((twenty-five thousand dollars))~~ \$50,000 for each proposed site shall accompany the application for ~~((an energy facility))~~ site certification. This charge shall be applied toward the total cost of the independent consultant study authorized by RCW 80.50.071. The determination of the total costs required for the study shall generally be as follows:

(1) The council may determine that the initial charge of ~~((twenty-five thousand dollars))~~ \$50,000 is insufficient to adequately fund the study. If so, the council shall so advise the applicant and shall furnish an estimate of the supplemental costs needed to complete the study and shall direct the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the study be allowed to continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds;

(2) Should the applicant file amendments or supplements to the application or should the council find that additional study of the application is required, additional cost estimates will be prepared by the consultant and provided to the council. Upon approval of the estimate by the council, the applicant shall be advised of the additional study costs;

(3) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has paid the required costs.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-030 Costs for regular application processing. Pursuant to RCW 80.50.071, each applicant for ~~((energy facility))~~ site certification shall at the time of application submission deposit ~~((twenty thousand dollars))~~ \$50,000 for costs related to processing of the application. Such processing costs shall consist of those determined by the council to be reasonable and necessary including:

(1) ~~((A hearing examiner(s)))~~ An administrative law judge(s) who may be retained by the council for the duration of the application processing period or for such portion of the processing period as the council may consider necessary;

(2) A court reporter(s) for the recording and preparation of transcripts of an adjudicative proceeding, council meetings, or public sessions which the council shall consider necessary;

(3) Additional staff salaries for those persons employed on the council staff for the duration of the application processing period; and

(4) Such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state, and miscellaneous expenses ~~((as))~~ that arise directly from application processing;

(5) The council may determine that the initial charge of ~~((twenty thousand dollars))~~ \$50,000 is insufficient to fund the council costs. If so, the council shall so advise the applicant and shall request the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the processing of the application continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-050 Costs for determining compliance. Pursuant to RCW 80.50.071 ~~((1)(e))~~ (2), each certificate holder shall pay ~~((such reasonable))~~ the actual costs ~~((as are actually and necessarily))~~ incurred by the council for inspection and determination of compliance by the certificate holder with the terms ~~((and conditions of the certificate))~~ of the certification relative to monitoring the effects of construction, operation, and site restoration of the facility.

(1) The ((amount of funds required to be placed on deposit by the)) certificate holder ((shall be determined by the council and deposited by the applicant)), within ((thirty)) 30 days of ((the governor's signing)) execution of the site certification agreement, shall deposit an amount up to \$50,000, or such greater amount as specified by the council after consultation with the certificate holder.

(2) In addition to the deposit required under subsection (1) of this section, certificate holder must reimburse the council for actual expenditures that arise in administering chapter 80.50 RCW and determining compliance.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-060 Costs for ((potential site)) preliminary studies. ((Ten thousand dollars shall accompany the study request)) The council, upon agreement with any potential applicant, may conduct a preliminary study of any potential project prior to receipt of an application for site certification, pursuant to RCW 80.50.175. A fee of \$10,000 for each potential project must accompany the agreement and ((be)) is a condition precedent to any action on the agreement by the council. In the event that the council determines that the initial fee of ((ten thousand dollars)) \$10,000 is insufficient to adequately fund the ((potential site)) preliminary study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental funds needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-065 Costs for preapplication process for electrical transmission facilities. Pursuant to RCW 80.50.340, ((ten thousand dollars)) \$10,000 shall accompany any preapplication request. If the council determines that the initial ((ten thousand dollars)) \$10,000 is insufficient to adequately fund the preapplication process, the council shall so advise the potential applicant and shall provide an estimate of the supplemental cost needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost of the study. Any unexpended funds shall be returned to the preapplicant.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-070 Failure to provide necessary costs. Failure to comply with WAC 463-58-020 through 463-58-060 shall result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in ((the council's initiation of enforcement action pursuant to WAC 463-70-070)) suspension of the certificate. The council will require any delinquent applicant or certificate holder to show cause why the council should not suspend application processing. Following deposit of all required funds, the council shall, in the case of application processing, consider reinstatement of application processing, or in the case of a certificate holder, ((reconsider enforcement action)) reinstatement of the certificate.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-080 Payment, reporting, and auditing procedures. (1)

The ~~((department provides all financial services for the))~~ council ~~((and will))~~ shall provide each applicant or certificate holder a statement of actual expenditures ~~((actually))~~ made during the preceding calendar quarter ~~((; the statement will be))~~ in sufficient detail to explain expenditures ~~((made against the deposited funds))~~. Within ~~((thirty))~~ 30 days of the receipt of the ~~((department's statement))~~ council's invoice, the applicant or certificate holder will pay an amount necessary to restore the total amount on deposit to the level established pursuant to WAC 463-58-020 through 463-58-060.

(2) Any funds remaining unexpended shall be refunded to the certificate holder, or in the case of an applicant to the applicant or, at the applicant's option, credited against required deposits of a certificate holder.

(3) All required payments shall be ~~((payable to the state treasurer))~~ deposited into the energy facility site evaluation council account created in RCW 80.50.390. The method of payment shall be prearranged with the ~~((department))~~ council prior to submission. The ~~((department))~~ council will establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The ~~((department))~~ council will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor.

OTS-5597.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-055 General—Form and number of copies. (1) Applications shall be on 8-1/2 by 11" sheets, in loose-leaf form with a hard cover binder. The applicants shall supply a sufficient number of copies of the application to the council, the number to be determined by the council in consultation with its staff, consultants, and the applicant. The applicants shall also supply two copies to each county, two copies to each city, and one copy to each port district in which the proposed project would be located. In addition, one copy shall be supplied to each intervenor on admission to the proceedings. Information later submitted shall be by page-for-page substitutions suitable for insertion in the application binder, bearing the date of the submission.

(2) An applicant shall also provide the council copies of its application in a digital format for use in personal computers. Digital format shall be determined by the council in consultation with its staff, consultants, and the applicant.

(3) At the time of submittal of the application, the applicant shall submit one copy of the applicable land use plans and zoning ordinances for the project site.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-075 General—Assurances. The application shall set forth insurance, bonding, or other arrangements proposed in order to mitigate for damage or loss to the physical or human environment caused by project construction, operation, abandonment, termination, or when operations cease at the completion of a project's life. The application shall describe the applicant's commitment to the requirements of chapter 463-72 WAC, Site restoration and preservation.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-101 General—Consultation. (1) Preapplication consultation. The application shall summarize all consultation that the applicant has conducted with local, state, and federal agencies and governments, Indian tribes, nonprofit organizations, and community citizen and interest groups prior to submittal of the application to the council.

(2) Meaningful involvement. The application shall describe all efforts made by the applicant to involve the public, regardless of race, ethnicity, or socioeconomic status, prior to submittal of the application to the council. The application shall also set forth information for contacting local interest and community groups to allow for meaningful involvement of all people, regardless of race, ethnicity, or socioeconomic status. For example, such information may include contacts with local minority radio stations and news publications.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-115 General—Specific contents and applicability. It is recognized that not all sections of these guidelines apply equally to all proposed energy facilities. If the applicant deems a particular section to be totally inapplicable, the applicant must justify such conclusion in response to said section. The applicant must address all sections of this chapter and must substantially comply with each section, show it does not apply, or secure a waiver from the council. Information submitted by the applicant shall be accompanied by a certification by applicant that all EFSEC application requirements have been reviewed, the data have been prepared by qualified professional personnel, and the application is substantially complete.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-116 General—Amendments to applications, additional studies, procedure. (1) Applications to the council for site certifi-

cation shall be complete and shall reflect the best available current information and intentions of the applicant.

(2) Amendments to a pending application must be presented to the council at least (~~(thirty)~~) 30 days prior to the commencement of the adjudicative hearing, except as noted in subsection (3) of this section.

(3) Within (~~(thirty)~~) 30 days after the conclusion of the adjudicative hearings, the applicant shall submit to the council (~~(7)~~) application amendments which include all commitments and stipulations made by the applicant during the adjudicative hearings.

(4) After the start of adjudicative hearings, additional environmental studies or other reports shall be admitted only for good cause shown after petitions to the council (~~(or)~~), upon request of the council, or submitted as a portion of prefiled testimony for a witness at least (~~(thirty)~~) 30 days prior to appearance.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-135 Proposal—Legal descriptions and ownership interests. (1) Principal facility. The application shall contain a legal description of the site to be certified and shall identify the applicants and all nonprivate ownership interests in such land.

(2) Associated and transmission facilities. For those facilities described in RCW 80.50.020 (~~((6) and (7))~~) (4) and (29), the application shall contain the legal metes and bounds description of the preferred centerline of the corridor necessary to construct and operate the facility contained therein, the width of the corridor, or variations in width between survey stations if appropriate, and shall identify the applicant's and others' ownership interests in lands over which the preferred centerline is described and of those lands lying equidistant for 1/4 mile either side of such center line.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-155 Proposal—Energy transmission systems. The application shall identify the federal, state, and industry criteria used in the conceptual design, route selection, and construction for all facilities identified in RCW 80.50.020 (~~((6) and (7))~~) (4) and (29), and shall indicate how such criteria are met.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-60-160 Proposal—Electrical transmission facilities. (1) Prior to submitting an application for site certification for an electric transmission facility under RCW 80.50.060 (~~((3))~~) (2) an applicant shall follow the procedure as set in chapter 463-61 WAC.

(2) An application for an electric transmission facility shall include the information required by this chapter unless the requirement may not be applicable to such a facility.

(3) An application for an electrical transmission facility shall include the results of any preapplication negotiations, including any agreements between the applicant and cities, towns, or counties where the electrical transmission facility is proposed to be located.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-165 Proposal—Water supply. (1) Water intake and conveyance facilities. The application shall describe the location and type of water intakes, water lines, pipelines and water conveyance systems, and other associated facilities required for providing water to the energy facility for which certification is being requested.

(2) Water supply and usage alternatives.

(a) The applicant shall consider water supply alternatives, including use of reclaimed water, water reuse projects, and conservation methods. The application shall describe all supply alternatives considered, including the associated cost of implementing such alternatives, and the resulting benefits and penalties that would be incurred.

(b) The application shall include detailed information regarding using air cooling as an alternative to consumptive water use, including associated costs.

(c) The application shall describe water conservation methods that will be used during construction and operation of the facility.

(3) Water rights and authorizations. An applicant proposing to use surface or groundwater for the facility shall describe the source and the amount of water required during construction and operation of the energy facility and shall do one or more of the following:

(a) Submit a water use authorization or a contractual right to use water supplied by a municipal corporation or other water purveyor; or

(b) Submit a water right permit or water right certificate issued by the department of ecology for the proposed facility in an amount sufficient to meet the need of the facility. If the permit and/or certificate has been issued five years prior to the submittal date, the applicant shall provide evidence that the water right permit is in good standing, or that the certificate has not been relinquished through nonuse; or

(c) For applications for new surface or groundwater withdrawals, or applications for water right changes or transfers of existing rights or certificates for withdrawal, the applicant shall submit appropriate application(s) for such rights, certificates or changes in rights and certificates, to the department of ecology prior to submittal of the application for site certification to the council. The application for site certification shall include report(s) of examination, identifying the water rights, or water right changes, submitted to and under review by the department of ecology, the quantities of water in gallons per minute and acre feet per year that are eligible for change, together with any limitations on use, including time of year. The report(s) of examination shall also include comments by the

Washington state department of fish and wildlife with respect to the proposed water right applications under review by the department of ecology.

(d) Mitigation. The application shall contain a description of mitigation proposed for water supply, and shall include any and all mitigation required by the department of ecology pursuant to the review of water rights or certificates, or changes to water rights or certificates required in (c) of this subsection.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-185 Proposal—Characteristics of aquatic discharge systems. (1) Where discharges into a watercourse are involved, the applicant shall identify outfall configurations including:

- (a) Location(s) of water discharge pipeline or conveyance system, the outfall, and any associated dilution systems;
- (b) Average and maximum discharge rate;
- (c) Extent of the dilution zone if necessary;
- (d) Width of the receiving water body at the outfall location;
- (e) Dimension(s), and rated and maximum carrying capacity of the water discharge pipeline or conveyance system, the outfall structure and any associated dilution systems;
- (f) Depth and width of the receiving water body at the discharge point;
- (g) Average, minimum and maximum water velocity of the receiving water body at the discharge point, and the times when the maximum and minimum flows occur.

(2) Where discharges are into a (~~water-course~~) watercourse via an existing discharge system for which certification is not being sought, the applicant shall also provide the following information:

- (a) Ownership of the discharge conveyance system;
- (b) A description of, and the terms and duration contained in, the use agreement that allows the applicant to use the discharge conveyance system;
- (c) Identification of the party responsible for operation and maintenance of the discharge conveyance system;
- (d) NPDES or state wastewater discharge permit number for the existing system discharge;
- (e) Location of connection point into the existing discharge system;
- (f) Diameter and rated and maximum volume capacity of the wastewater line or conveyance system into which discharge is being proposed;
- (g) Existing, rated and maximum flow levels in the wastewater line or conveyance system into which the discharge is being proposed;
- (h) Where a discharge is proposed to a publicly owned treatment works, in addition to the items provided in subsections (1) and (2) of this section, the applicant shall provide an engineering analysis showing that the proposed discharge will not cause the waste treatment facility to exceed capacities or to violate its authorized discharge limits, including both the quality of the discharge and the volume of the discharge, or to violate the permits governing its operation.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-195 Proposal—Wastewater treatment. (1) The application shall describe each wastewater source associated with the facility and for each source, the applicability of all known, available, and reasonable methods of wastewater control and treatment to ensure it meets current waste discharge and water quality regulations.

(2) Where wastewater control involves collection and retention for recycling and/or resource recovery, the applicant shall show in detail the methods selected, including at least the following information:

- (a) Waste source(s);
- (b) Average and maximum daily amounts and composition of wastes;
- (c) The type of storage vessel and the storage capacity and duration; and
- (d) Any bypass or overflow facilities to the wastewater treatment system(s) or the receiving waters.

(3) Where wastewaters are discharged into receiving waters, the applicant shall provide a detailed description of the proposed treatment system(s), including:

- (a) Appropriate flow diagrams and tables showing the sources of all tributary waste streams((÷));
- (b) Their average and maximum daily amounts and composition;
- (c) Individual treatment units and their design criteria;
- (d) Major piping (including all bypasses); and
- (e) Average and maximum daily amounts and composition of effluent(s).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-205 Proposal—Spillage prevention and control. The application shall describe all spillage prevention and control measures to be employed regarding accidental and/or unauthorized discharges or emissions, relating such information to specific facilities, including but not limited to locations, amounts, storage duration, mode of handling, and transport. The application shall describe in general detail the content of a Construction Phase and an Operational Phase Spill Prevention, Control, and Countermeasure Plan (chapter 40 C.F.R. Part 112 and Hazardous Waste Management Plan) that will be required prior to commencement of construction.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-225 Proposal—Emission control. (1) The application shall describe and quantify all construction and operational air emissions subject to regulation by local, state, or federal agencies.

(2) The application shall identify all construction and operational air emissions that are exempt from local, state, and federal regulation, and the regulatory basis for the exemption.

(3) The applicant shall demonstrate that the highest and best practicable treatment for control of emissions will be utilized in facility construction and operation.

(4) The application shall identify all state and federal air emission permits that would be required after approval of the site certification agreement by the governor, and the timeline for submittal of the appropriate applications for such permits.

(5) In the case of (~~fossil-fuel-fired~~) fossil-fueled energy plants, the application shall describe and quantify all emissions of greenhouse gases.

(6) In the case of a nuclear-fueled plant, the applicant shall address optional plant designs as these may relate to gaseous emissions.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-60-232 Proposal—Greenhouse gases emissions performance standards. For baseload electric generating facilities, the application shall provide information required by (~~(7)~~) chapter 463-85 WAC and describe how the requirements of chapter 463-85 WAC will be met.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-255 Proposal—Construction methodology. The application shall describe in detail the construction procedures, including major equipment, proposed for any construction activity within watercourses, wetlands, and other sensitive areas.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-275 Proposal—Security concerns. The application shall describe the means employed for protection of the facility from sabotage, terrorism, vandalism, and other security threats.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-285 Proposal—Study schedules. The application shall furnish a brief description of all present or projected schedules for additional environmental studies. The studies' descriptions should outline their scope and indicate projected completion dates.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-297 Proposal—Pertinent federal, state, and local requirements. (1) Each application shall include a list of all applicable federal, state, and local statutes, ordinances, rules, permits, and required use authorizations (i.e., leases, easements, rights of way, or similar authorizations) that would apply to the project if it were not under council jurisdiction. For each federal, state, or local requirement, the applicant shall describe how the project would comply or fail to comply. If the proposed project does not comply with a specific requirement, the applicant shall discuss why such compliance should be excused.

(2) Inadvertent failure by the applicant to discover and list a pertinent requirement shall not invalidate the application, but may delay the council's processing of the application.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-302 Natural environment—Earth. (1) The applicant shall provide detailed descriptions of the existing environment, project impacts, and mitigation measures for the following:

(a) Geology. The application shall include the results of a comprehensive geologic survey showing conditions at the site, the nature of foundation materials, and potential seismic activities.

(b) Soils. The application shall describe all procedures to be utilized to minimize erosion and other adverse consequences during the removal of vegetation, excavation of borrow pits, foundations and trenches, disposal of surplus materials, and construction of earth fills. The location of such activities shall be described, and the quantities of material shall be indicated.

(c) Topography. The application shall include contour maps showing the original topography and any changes likely to occur as a result of energy facility construction and related activities. Contour maps showing proposed shoreline or channel changes shall also be furnished.

(d) Unique physical features. The application shall list any unusual or unique geologic or physical features in the project area or areas potentially affected by the project.

(e) Erosion/enlargement of land area (accretion). The application shall identify any potential for erosion, deposition, or change of any land surface, shoreline, beach, or submarine area due to construction activities, placement of permanent or temporary structures, or changes in drainage resulting from construction or placement of facilities associated with construction or operation of the proposed energy project.

(2) The application shall show that the proposed energy facility will comply with the state building code provisions for seismic hazards applicable at the proposed location.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-322 Natural environment—Water. (1) The application shall provide detailed descriptions of the affected natural water environment, project impacts, and proposed mitigation measures, and shall demonstrate that facility construction and/or operational discharges will be compatible with and meet state water quality standards.

(2) Surface water movement/quality/quantity. The application shall set forth all background water quality data pertinent to the site, and hydrographic study data and analysis of the receiving waters within (~~one-half~~) $\frac{1}{2}$ mile of any proposed discharge location with regard to: Bottom configuration; minimum, average, and maximum water depths and velocities; water temperature and salinity profiles; anticipated effluent distribution, dilution, and plume characteristics under all discharge conditions; and other relevant characteristics which could influence the impact of any wastes discharged thereto.

(3) Runoff/absorption. The application shall describe how surface water runoff and erosion are to be controlled during construction and operation (~~(τ)~~) and how runoff can be reintroduced to the ground for return to the groundwater supply (~~(τ)~~) and to assure compliance with state water quality standards.

(4) Floods. The application shall describe potential for flooding, identify the five, (~~(fifty)~~) 50, and (~~(one hundred)~~) 100-year flood boundaries, and describe possible flood impacts at the site, as well as possible flood-related impacts both upstream and downstream of the proposed facility as a result of construction and operation of the facility and all protective measures to prevent possible flood damage to the site and facility.

(5) Groundwater movement/quantity/quality. The application shall describe the existing groundwater movement, quality, and quantity on and near the site, and in the vicinity of any points of water withdrawal associated with water supply to the project. The application shall describe any changes in surface and groundwater movement, quantity, quality or supply uses which might result from project construction or operation and from groundwater withdrawals associated with water supply for the project, and shall provide mitigation for adverse impacts that have been identified.

(6) Public water supplies. The application shall provide a detailed description of any public water supplies which may be used or affected by the project during construction or operation of the facility.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-332 Natural environment—Habitat, vegetation, fish, and wildlife. The application shall describe all existing habitat types, vegetation, wetlands, fish, wildlife, and in-stream flows on and near the project site which might reasonably be affected by construction, operation, decommissioning, or abandonment of the energy facility and any associated facilities. For purposes of this section, the term "project site" refers to the site for which site certifica-

tion is being requested, and the location of any associated facilities or their right of way corridors, if applicable. The application shall contain the following information:

(1) Assessment of existing habitats and their use. The application shall include a habitat assessment report prepared by a qualified professional. The report shall contain, but not be limited to, the following information:

(a) A detailed description of habitats and species present on and adjacent to the project site, including identification of habitats and species present, relative cover, density, distribution, and health and vigor;

(b) Identification of any species of local importance, priority species, or endangered, threatened, or candidate species that have a primary association with habitat on or adjacent to the project site;

(c) A discussion of any federal, state, or local special management recommendations, including department of fish and wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

(2) Identification of energy facility impacts. The application shall include a detailed discussion of temporary, permanent, direct, and indirect impacts on habitat, species present and their use of the habitat during construction, operation, and decommissioning of the energy facility. Impacts shall be quantified in terms of habitat acreage affected, and numbers of individuals affected, threatened, or removed. The discussion of impacts shall also include:

(a) Impacts to water quality, stream hydrology, and in-stream flows;

(b) Impacts due to introduction, spread, and establishment of noxious or nonnative species;

(c) Impacts and changes to species' communities adjacent to the project site;

(d) Impacts to fish and wildlife migration route(s);

(e) Impacts to any species of local importance, priority species, or endangered, threatened, or candidate species;

(f) Impacts due to any activities that may otherwise confuse, deter, disrupt, or threaten fish or wildlife;

(g) An assessment of risk of collision of avian species with any project structures, during day and night, migration periods, and inclement weather;

(h) An assessment for the potential of impacts of hazardous or toxic materials spills on habitats and wildlife.

(3) Mitigation plan. The application shall include a detailed discussion of mitigation measures, including avoidance, minimization of impacts, and mitigation through compensation or preservation and restoration of existing habitats and species, proposed to compensate for the impacts that have been identified. The mitigation plan shall also:

(a) Be based on sound science;

(b) Address all best management practices to be employed and setbacks to be established;

(c) Address how cumulative impacts associated with the energy facility will be avoided or minimized;

(d) Demonstrate how the mitigation measures will achieve equivalent or greater habitat quality, value, and function for those habitats being impacted, as well as for habitats being enhanced, created, or protected through mitigation actions;

(e) Identify and quantify level of compensation for impacts to, or losses of, existing species due to project impacts and mitigation measures, including benefits that would occur to existing and new species due to implementation of the mitigation measures;

(f) Address how mitigation measures considered have taken into consideration the probability of success of full and adequate implementation of the mitigation plan;

(g) Identify future use of any man-made ponds or structures created through construction and operation of the facility or associated mitigation measures, and associated beneficial or detrimental impacts to habitats, fish, and wildlife;

(h) Discuss the schedule for implementation of the mitigation plan, prior to, during, and post-construction and operation;

(i) Discuss ongoing management practices that will protect habitat and species, including proposed monitoring and maintenance programs;

(j) Mitigation plans should give priority to proven mitigation methods. Experimental mitigation techniques and mitigation banking may be considered by the council on a case-by-case basis. Proposals for experimental mitigation techniques and mitigation banking must be supported with analyses demonstrating that compensation will meet or exceed requirements giving consideration to the uncertainty of experimental techniques, and that banking credits meet all applicable state requirements.

(4) Guidelines review. The application shall give due consideration to any project-type specific guidelines established by state and federal agencies for assessment of existing habitat, assessment of impacts, and development of mitigation plans. The application shall describe how such guidelines are satisfied. For example, wind generation proposals shall consider *Washington state department of fish and wildlife Wind Power Guidelines*, August 2003, or as hereafter amended. Other types of energy facilities shall consider department of fish and wildlife Policy M-5002, dated January 18, 1999, or as hereafter amended.

(5) Federal approvals. The application shall list any federal approvals required for habitat, vegetation, fish, and wildlife impacts and mitigation, status of such approvals, and federal agency contacts responsible for review.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-333 Natural environment—Wetlands. The application shall include a report for wetlands prepared by a qualified professional wetland scientist. For purposes of this section, the term "project site" refers to the site for which site certification is being requested, and the location of any associated facilities or their right of way corridors if applicable. The report shall include, but not be limited to, the following information:

(1) Assessment of existing wetlands present and their quality. The assessment of the presence and quality of existing wetlands shall include:

(a) A wetland delineation performed by a qualified professional according to the *Washington State Wetlands ((Delineation and))* *Identi-*

fication and Delineation Manual, 1997, and associated data sheets, site maps with data plots and delineated wetlands areas, photographs, and topographic and aerial site maps.

(b) A description of wetland categories found on the site according to the Washington state wetland rating system found in *Western Washington, Ecology Publication #93-74* and *Eastern Washington, Ecology Publication 391-58*, or as revised by the department of ecology.

(c) A discussion of water sources supplying wetlands and documentation of hydrologic regime encountered.

(d) A function assessment report prepared according to the *Washington State Wetland Function Assessment Methods* to assess wetlands functions for those wetland types covered by the method, and including a description of type and degree of wetland functions that are provided.

(2) Identification of energy facility impacts. The application shall include a detailed discussion of temporary, permanent, direct, and indirect impacts on wetlands, their functions and values, and associated water quality and hydrologic regime during construction, operation, and decommissioning of the energy facility. The discussion of impacts shall also include impacts to wetlands due to proposed mitigation measures.

(3) Wetlands mitigation plan. The application shall include a detailed discussion of mitigation measures, including avoidance, minimization of impacts, and mitigation through compensation or preservation and restoration of existing wetlands, proposed to compensate for the direct and indirect impacts that have been identified. The mitigation plan shall be prepared consistent with the *Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals*, 1994, as revised. The application shall also include, but not be limited to:

(a) A discussion of how standard buffer widths have been incorporated into the mitigation proposal. Variances from standard buffer widths must be supported with professional analyses demonstrating that smaller or averaged buffer widths protect the wetland functions and values based on site-specific characteristics;

(b) A demonstration of how enhancement, restoration, or compensatory mitigation actions will achieve equivalent or greater hydrologic and biological functions at the impact site, and whether any existing wetland functions would be reduced by the mitigation measures;

(c) A discussion of how standard mitigation ratios have been incorporated into the mitigation proposal. Variances from standard mitigation ratios must be supported with professional analyses demonstrating that equivalent or greater hydrologic and biological functions will be achieved;

(d) A demonstration that the mitigation actions are being conducted in an appropriate location, and that consideration was given in order of preference to: On-site opportunities; opportunities within the same subbasin or watershed assessment unit; opportunities within the same Water Resources Inventory Area (WRIA); opportunities in another WRIA;

(e) A discussion of the timing and schedule for implementation of the mitigation plan;

(f) A discussion of ongoing management practices that will protect wetlands, including proposed monitoring and maintenance programs;

(g) Mitigation plans should give priority to proven mitigation methods. Experimental mitigation techniques and mitigation banking may be considered by the council on a case-by-case basis. Proposals for

experimental mitigation techniques and mitigation banking must be supported with analyses demonstrating that compensation will meet or exceed requirements giving consideration to the uncertainty of experimental techniques, and that banking credits meet all applicable state requirements.

(4) Federal approvals. The application shall list any federal approvals required for wetlands impacts and mitigation, status of such approvals, and federal agency contacts responsible for review.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-342 Natural environment—Energy and natural resources. (1) Amount required/rate of use/efficiency. The application shall describe the rate of use and efficiency of consumption of energy and natural resources during both construction and operation of the proposed facility.

(2) Source/availability. The application shall describe the sources of supply, locations of use, types, amounts, and availability of energy or resources to be used or consumed during construction and operation of the facility.

(3) Nonrenewable resources. The application shall describe all nonrenewable resources that will be used(~~(τ)~~) or be made inaccessible or unusable by construction and operation of the facility.

(4) Conservation and renewable resources. The application shall describe conservation measures and/or renewable resources which will or could be used during construction and operation of the facility.

(5) Scenic resources. The application shall describe any scenic resources which may be affected by the facility or discharges from the facility.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-352 Built environment—Environmental health. (1) Noise. The application shall:

(a) Describe and quantify the background noise environment that would be affected by the energy facility. The number of locations used for assessment of the existing noise environment shall be commensurate with the type of energy facility being proposed, the impacts expected, and the presence of high-density receptor locations in the vicinity of the proposed site.

(b) Identify and quantify the impact of noise emissions resulting from construction and operation of the energy facility, using appropriate state-of-the-art modeling techniques(~~(τ)~~) and including impacts resulting from low frequency noise;

(c) Identify local, state, and federal environmental noise impact guidelines;

(d) Describe the mitigation measures to be implemented to satisfy WAC 463-62-030;

(e) Describe the means the applicant proposes to employ to assure continued compliance with WAC 463-62-030.

(2) Risk of fire or explosion. The application shall describe any potential for fire or explosion during construction, operation, standby or nonuse, dismantling, or restoration of the facility and what measures will be made to mitigate any risk of fire or explosion.

(3) Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials. The application shall describe any potential for release of toxic or hazardous materials to the environment and shall identify plans for complying with the federal Resource Conservation and Recovery Act and the state Dangerous waste regulations (chapter 173-303 WAC). The application shall describe the treatment or disposition of all solid or semisolid construction and operation wastes including spent fuel, ash, sludge, and bottoms, and show compliance with applicable state and local solid waste regulations.

(4) Safety standards compliance. The application shall identify all federal, state, and local health and safety standards which would normally be applicable to the construction and operation of a project of this nature and shall describe methods of compliance therewith.

(5) Radiation levels. For facilities which propose to release any radioactive materials, the application shall set forth information relating to radioactivity. Such information shall include background radiation levels of appropriate receptor media pertinent to the site. The application shall also describe the proposed radioactive waste treatment process, the anticipated release of radionuclides, their expected distribution and retention in the environment, the pathways which may become sources of radiation exposure, and projected resulting radiation doses to human populations. Other sources of radiation which may be associated with the project shall be described in all applications.

(6) Emergency plans. The application shall describe emergency plans which will be required to assure the public safety and environmental protection on and off the site in the event of a natural disaster or other major incident relating to or affecting the project as well as identifying the specific responsibilities that will be assumed by the applicant.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-362 Built environment—Land and shoreline use. (1)

The application shall identify land use plans and zoning ordinances applicable to the project site.

(2) Light and glare. The application shall describe the impact of light and glare from construction and operation and shall describe the measures to be taken in order to eliminate or lessen this impact.

(3) Aesthetics. The application shall describe the aesthetic impact of the proposed energy facility and associated facilities and any alteration of surrounding terrain. The presentation will show the location and design of the facilities relative to the physical features of the site in a way that will show how the installation will appear relative to its surroundings. The applicant shall describe the procedures to be utilized to restore or enhance the landscape disturbed during construction (to include temporary roads).

(4) Recreation. The application shall list all recreational sites within the area affected by construction and operation of the facility and shall then describe how each will be impacted by construction and operation.

(5) Historic and cultural preservation. The application shall coordinate with and provide a list of all historical and archaeological sites within the area affected by construction and operation of the facility to the Washington state (~~office~~) department of archaeology and historic preservation and interested tribe(s). The application shall:

(a) Provide evidence of this coordination;
 (b) Describe how each site will be impacted by construction and operation; and

(c) Identify what mitigation will be required.

(6) Agricultural crops/animals. The application shall identify all agricultural crops and animals which could be affected by construction and/or operation of the facility and any operations, discharges, or wastes which could impact the adjoining agricultural community.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-372 Built environment—Transportation. (1) Transportation systems. The application shall identify all permanent transportation facilities impacted by the construction and operation of the energy facilities, the nature of the impacts, and the methods to mitigate impacts. Such impact identification, description, and mitigation shall, at least, take into account:

(a) Expected traffic volumes during construction, based on where the (~~work force~~) workforce is expected to reside;

(b) Access routes for moving heavy loads, construction materials, or equipment;

(c) Expected traffic volumes during normal operation of the facility;

(d) For transmission facilities, anticipated maintenance access; and

(e) Consistency with local comprehensive transportation plans.

(2) Vehicular traffic. The application shall describe existing roads (~~(r)~~) and estimate volume, types, and routes of vehicular traffic which will arise from construction and operation of the facility. The applicant shall indicate the applicable standards to be utilized in improving existing roads and in constructing new permanent or temporary roads or access, and shall indicate the final disposition of new roads or access and identify who will maintain them.

(3) Waterborne, rail, and air traffic. The application shall describe existing railroads and other transportation facilities and indicate what additional access, if any, will be needed during planned construction and operation. The applicant shall indicate the applicable standards to be utilized in improving existing transportation facilities and in constructing new permanent or temporary access facilities, and shall indicate the final disposition of new access facilities and identify who will maintain them.

(4) Parking. The application shall identify existing and any additional parking areas or facilities which will be needed during construction and operation of the energy facility, and plans for maintenance and runoff control from the parking areas or facilities.

(5) Movement/circulation of people or goods. The application shall describe any change to the current movement or circulation of people or goods caused by construction or operation of the facility. The application shall indicate consideration of multipurpose utilization of rights of way and describe the measures to be employed to utilize, restore, or rehabilitate disturbed areas. The application shall describe the means proposed to ensure safe utilization of those areas under applicant's control where public access will be granted during project construction, operation, abandonment, termination, or when operations cease.

(6) Traffic hazards. The application shall identify all hazards to traffic caused by construction or operation of the facility. Except where security restrictions are imposed by the federal government, the applicant shall indicate the manner in which fuels and waste products are to be transported to and from the facility, including a designation of the specific routes to be utilized.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-535 Socioeconomic impact. The application shall include a detailed socioeconomic impact analysis which identifies primary, secondary, positive as well as negative impacts on the socioeconomic environment in the area potentially affected by the project, with particular attention to the impact of the proposed facility on population, (~~work force~~) workforce, property values, housing, health facilities and services, education facilities, governmental services, and local economy. The study area shall include the area that may be affected by employment within a one-hour commute distance of the project site. The analysis shall use the most recent data as published by the U.S. Census or state of Washington sources.

(1) The analysis shall include:

(a) Population and growth rate data for the most current (~~ten~~) 10-year period for the county or counties and incorporated cities in the study area;

(b) Published forecast population figures for the study area for both the construction and operation(~~s~~) periods;

(c) Numbers and percentages describing the race/ethnic composition of the cities and counties in the study area;

(d) Average per capita and household incomes, including the number and percentage of the population below the poverty level for the cities and counties within the study area;

(e) A description of whether or not any minority or low-income populations would be displaced by this project or disproportionately impacted;

(f) The average annual (~~work force~~) workforce size, total number of employed workers, and the number and percentage of unemployed workers including the year that data are most recently available. Employment numbers and percentage of the total (~~work force~~) workforce should be provided for the primary employment sectors;

(g) An estimate by month of the average size of the project construction, operational (~~(work force)~~) workforce by trade, and (~~(work force)~~) workforce peak periods;

(h) An analysis of whether or not the locally available (~~(work force)~~) workforce would be sufficient to meet the anticipated demand for direct workers and an estimate of the number of construction and operation workers that would be hired from outside of the study area if the locally available (~~(work force)~~) workforce would not meet the demand;

(i) A list of the required trades for the proposed project construction;

(j) An estimate of how many direct or indirect operation and maintenance workers (including family members and/or dependents) would temporarily relocate;

(k) An estimate of how many workers would potentially commute on a daily basis and where they would originate.

(2) The application shall describe the potential impact on housing needs, costs, or availability due to the influx of workers for construction and operation of the facility and include the following:

(a) Housing data from the most recent (~~(ten)~~) 10-year period that data are available, including the total number of housing units in the study area, number of units occupied, number and percentage of units vacant, median home value, and median gross rent. A description of the available hotels, motels, bed and breakfasts, campgrounds, or other recreational facilities;

(b) How and where the direct construction and indirect (~~(work force)~~) workforce would likely be housed. A description of the potential impacts on area hotels, motels, bed and breakfasts, campgrounds, and recreational facilities;

(c) Whether or not meeting the direct construction and indirect (~~(work force's)~~) workforce's housing needs might constrain the housing market for existing residents and whether or not increased demand could lead to increased median housing values or median gross rents and/or new housing construction. Describe mitigation plans, if needed, to meet shortfalls in housing needs for these direct and indirect (~~(work forces)~~) workforces.

(3) The application shall have an analysis of the economic factors including the following:

(a) The approximate average hourly wage that would likely be paid to construction and operational workers, how these wage levels vary from existing wage levels in the study area, and estimate the expendable income that direct workers would likely spend within the study area;

(b) How much (~~(7)~~) and what types of direct and indirect taxes would be paid during construction and operation of the project and which jurisdictions would receive those tax revenues;

(c) The other overall economic benefits (including mitigation measures) and costs of the project on the economies of the county, the study area, and the state, as appropriate, during both the construction and operational periods.

(4) The application shall describe the impacts, relationships, and plans for utilizing or mitigating impacts caused by construction or operation of the facility to the following public facilities and services:

- (a) Fire;
- (b) Police;
- (c) Schools;

- (d) Parks or other recreational facilities;
- (e) Utilities;
- (f) Maintenance;
- (g) Communications;
- (h) Water/stormwater;
- (i) Sewer/solid waste;
- (j) Other governmental services.

(5) The application shall compare local government revenues generated by the project (e.g., property tax, sales tax, business and occupation tax, payroll taxes) with their additional service expenditures resulting from the project; and identify any potential gaps in expenditures and revenues during both construction and operation of the project. This discussion should also address potential temporal gaps in revenues and expenditures.

(6) To the degree that a project will have a primary or secondary negative impact on any element of the socioeconomic environment, the applicant is encouraged to work with local governments to avoid, minimize, or compensate for the negative impact. The term "local government" is defined to include cities, counties, school districts, fire districts, sewer districts, water districts, irrigation districts, or other special purpose districts.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-536 Air emissions permits and authorizations. (1)

The application for site certification shall include a completed prevention of significant deterioration (PSD) permit (~~((PSD))~~) application and a notice of construction application pursuant to the requirements of chapter 463-78 WAC.

(2) The application shall include requests for authorization for any emissions otherwise regulated by local air agencies as identified in WAC 463-60-297 Pertinent federal, state, and local requirements.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-537 Wastewater/stormwater discharge permit applications. The application for site certification shall include:

(1) Either:

(a) A completed National Pollutant Discharge Elimination System (NPDES) permit application, for any proposed discharge to surface waters of the state of Washington, pursuant to the requirements of WAC 463-76-031; or

~~((2))~~ (b) For any proposed discharge to publicly owned treatment works (POTW) and/or groundwater of the state of Washington, a state waste discharge application; and

~~((3))~~ (2) A notice of intent to be covered under any applicable statewide general permit for stormwater discharge.

OTS-5598.1

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-030 Applicability. (1) The provisions of this chapter apply to the construction, reconstruction, or modification of electrical transmission facilities in each of the following circumstances:

(a) The facility is located in a national interest electric transmission corridor as specified in RCW 80.50.045.

(b) The applicant(s) or preapplicant(s) choose to seek certification under RCW 80.50.060 and the facility:

(i) Has a nominal voltage of at least (~~one hundred fifteen thousand~~) 115,000 volts; and

(ii) Is proposed to be located in a completely new corridor which is located in more than one jurisdiction where at least one such jurisdiction has promulgated land use plans or zoning ordinances. The location of the terminus of the facility or the location of an interconnection between the facility and the existing electrical transmission grid in an existing corridor does not disqualify a facility from consideration under this subsection.

(c) The applicant(s) or preapplicant(s) choose to seek certification under RCW 80.50.060 and the facility:

(i) Has a nominal voltage in excess of (~~one hundred fifteen thousand~~) 115,000 volts; and

(ii) Is proposed to be located outside an existing or designated electrical transmission corridor identified in (a) or (b) of this subsection.

(2) This section does not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those specified in this section.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-040 Initial consultation. Prior to filing a preapplication request under WAC 463-61-050, the preapplicant shall meet and consult with the EFSEC staff concerning the proposed project. Topics for discussion shall include but not be limited to:

(1) The nature of the project, the contents of the preapplication request, and the status of the preapplicant's progress toward obtaining information and data regarding the project.

(2) A discussion of whether a third-party contractor is likely to be needed to prepare an environmental documentation for the project.

(3) Development of a preapplication plan to be filed with a preapplication request.

(4) The coordination of the public informational meeting.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-050 Preapplication process. The preapplication request shall be filed with EFSEC at the EFSEC's office and contain the following information:

(1) The name and mailing address of the preapplicant, including a contact name, address, telephone number, and email address of the contact person.

(2) A description of the proposed transmission route and corridor, including location maps and plot plans to scale, showing all major components, including a description of zoning and site availability for any permanent facility, and including whether and to what extent the proposed project is located within a national interest electric transmission corridor.

(3) A description of the proposed right of way width for the transmission line, including the extent a new right of way will be required or an existing right of way will be widened.

(4) A description of the proposed transmission line structures and their dimensions.

(5) A description of the schedule desired for the project, including the expected application filing date, the expected beginning date for construction, and the expected project operational date.

(6) A list of the federal, state, tribal, and local government entities, including mailing addresses, contact names, telephone numbers, and email addresses that have possible permitting responsibilities for the project (if the project proponents were not to choose the EFSEC review) or ownership of land on which the project will be located. The list shall also identify governmental entities that have requested the preapplicant to notify them of any application or preapplication for site certification.

(7) Information or data that may be available at a later date.

(8) A summary and timeline of any initial consultation to explain the proposal and/or request input from the EFSEC staff, federal, state, and local agencies, tribal governments, property owners, and interested persons.

(9) A public participation plan that:

(a) Identifies specific tools and actions to facilitate stakeholder communications and public information, including an up-to-date project website and a readily accessible, single point of contact within the company;

(b) Lists all central locations in each local government throughout the project area where the preapplicant shall provide copies of all their filings related to the proposed project; and

(c) Includes a description and schedule explaining how the preapplicant intends to respond to requests for information from the public as well as federal, state, local, and tribal agencies or any other legal entities that could have permitting requirements if the project proponents were not to choose the EFSEC review.

(10) A negotiation process acceptable to EFSEC between the preapplicant and the cities, towns, and/or counties through which the proposed transmission line corridor will be located except where the cities, towns, and/or counties have designated transmission corridors through their land use plans or zoning ordinances.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-060 Commencement of preapplication process and public informational meeting. (1) Within three days of filing a preapplication request with EFSEC, the preapplicant shall send notice to:

(a) All the towns, cities, and counties in which the proposed electric transmission line route is located;

(b) Persons or governmental agencies owning land that may be acquired for the project or in which an easement may be sought;

(c) Landowners within (~~three hundred~~) 300 feet of the proposed corridor; and

(d) Tribal, federal, and state permitting entities if the project proponents were not to choose the EFSEC review.

(2) The notice shall contain a brief summary of the proposed project, the preapplication and application process and tentative schedules, the locations where copies of the notice are located in each town, city, and county traversed by the proposed transmission route, and the address of a website containing the proposed project information.

(3) The notice to each affected landowner shall be mailed to the address of record on file with the applicable county auditor and have an explanation of the rights an affected landowner has during an EFSEC application review and under applicable Washington eminent domain laws.

(4) Within (~~sixty~~) 60 days after receipt of the preapplication fee, EFSEC shall conduct at least one public informational meeting. The public informational meeting shall be for the purpose of informing the public and interested entities of relevant information regarding the proposed electrical transmission facility.

(a) The public meeting, at a minimum, shall provide the details of the preapplication request and the preapplication plan including the use of exhibits and hand-outs.

(b) The preapplicant and EFSEC staff shall be available and prepared to answer questions.

(c) The meeting shall be scheduled to maximize the opportunity for attendance by the public and held at a location near the proposed transmission corridor. If the proposed transmission corridor crosses multiple counties, EFSEC may hold additional preapplication public meetings along the proposed corridor.

(d) At least two weeks prior to the date of the public meeting, notice of the preapplication public meeting shall be published in newspapers of general circulation for each town, city, and/or county where the site is proposed.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-070 Corridors and transmission facilities considerations. (1) EFSEC shall consider and may recommend certification of electrical transmission facilities in corridors designated for this purpose by affected cities, towns, or counties where:

(a) Jurisdictions have identified electrical transmission facility corridors as part of their land use plans and zoning maps based on policies adopted in their plans.

(b) The proposed electrical transmission facility is consistent with any adopted development regulations that govern the siting of electrical transmission facilities in such corridors.

(c) Contiguous jurisdictions and jurisdictions in which related regional electrical transmission facilities are located have either prior to or during the preapplication process undertaken good faith efforts to coordinate the locations of their corridors consistent with RCW 36.70A.100.

(2) If EFSEC determines that negotiations as required in WAC 463-61-080 have failed, EFSEC shall consider the applicant's proposed corridor and transmission facilities consistent with RCW 80.50.090 and 80.50.100 taking into consideration the positions of the preapplicant and the affected cities, towns, or counties.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-080 Negotiations between preapplicants, cities, towns and counties. (1) As required by RCW 80.50.330(2) if no corridor has been designated by a local government, the preapplicant and affected cities, towns, and/or counties shall negotiate to designate a corridor for the electrical transmission facility.

(2) If after (~~sixty~~) 60 days of negotiations between the preapplicant and affected cities, towns, and/or counties, no corridor has been agreed upon, the preapplicant together with an affected city, town, or county may request EFSEC extend the time of negotiations by a period of time that the preapplicant and city, town, and/or county have agreed upon. If such a joint request is not made, the negotiations shall be deemed failed.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-090 Preapplication costs. (1) A preapplicant shall deposit with the state treasurer (~~ten thousand dollars~~) \$10,000 to be applied to the cost of the preapplication process as a condition for proceeding by EFSEC.

(2) EFSEC shall manage the preapplication costs using the structure outlined in RCW 80.50.071 as follows:

(a) The preapplicant shall pay all reasonable and necessary costs incurred by EFSEC and its members;

(b) EFSEC shall charge against deposits made by the preapplicant;

(c) EFSEC shall provide the preapplicant with estimates of expected costs;

(d) Any EFSEC costs in excess of the initial (~~ten thousand dollars~~) \$10,000 shall be agreed to by the preapplicant and deposited prior to EFSEC expenditure; and

(e) Any unexpended portions of funds deposited for the preapplication process shall be returned to the preapplicant or, if requested by the preapplicant, applied to the cost of EFSEC's review of an application for site certification.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-100 Applications for site certification. (1) An application for site certification may be submitted when the preapplication process is completed. The preapplication process shall be complete when:

(a) EFSEC has held one or more public meetings under WAC 463-61-060(~~(+3)~~) (4); and

(b) Negotiations between affected cities, towns, and/or counties have been conducted and a corridor has been agreed on; or

(c) Negotiations under WAC 463-61-080 have been conducted but the preapplicant, cities, towns, and/or counties have not agreed on a corridor and EFSEC has determined that negotiations have failed.

(2) Applications for site certification of electrical transmission lines under RCW 80.50.045 and 80.50.060 shall follow the guidelines for applications for site certification found in chapter 463-60 WAC.

OTS-5599.1

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-62-010 Purpose. (1) The purpose of this chapter is to implement the policy and intent of RCW 80.50.010. This chapter sets forth performance standards and mitigation requirements specific to seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality, associated with site certification for construction and operation of energy facilities under the jurisdiction of the council. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter 463-66 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

(2) The provisions of this chapter shall apply to the construction and operation of energy facilities, pursuant to chapter 80.50 RCW.

(3) Compliance with the standards within this chapter shall satisfy, in their respective subject areas, the requirements for issuance of a site certificate for construction and operation of energy facilities specified in subsection (2) of this section provided, however, that the council may require additional mitigation in the event that documents prepared pursuant to (~~(43.21)~~) 43.21C RCW (State Environmental Policy Act), demonstrate that the project poses a probable significant adverse impact that is not mitigated by the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-020 Seismicity. The seismicity standard for construction of energy facilities shall be the standards contained in the state building code, chapter 51-50 WAC.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-030 Noise standards. Energy facilities shall meet the noise standards established in (~~chapter 70.107~~) RCW 70A.20.010, the Noise Control Act of 1974; and state rules adopted to implement those requirements in chapter 173-60 WAC, Maximum environmental noise levels.

(1) Adoption by reference. The energy facility site evaluation council adopts the following provisions of chapter 173-60 WAC by reference.

- (a) WAC 173-60-010 Authority and purpose.
- (b) WAC 173-60-020 Definitions.
- (c) WAC 173-60-030 Identification of environments.
- (d) WAC 173-60-040 Maximum permissible environmental noise levels.

- (e) WAC 173-60-050 Exemptions.
- (f) WAC 173-60-080 Variances and implementation schedules.
- (g) WAC 173-60-090 Enforcement policy.
- (2) Additional definitions.

(a) "Council" means the energy facility site evaluation council.

(b) In addition to the definitions contained in WAC 173-60-020, "department" and "director" shall be synonymous with the council unless a different meaning is plainly required by context.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-060 Water quality. Waste water discharges from projects under the council's jurisdiction shall meet the requirements of applicable state water quality standards, chapter 173-201A WAC, state groundwater quality standards, chapter 173-200 WAC, state sediment management standards, chapter (~~173-204A~~) 173-204 WAC, requirements of the Federal Water Pollution Control Act as amended (86 Stat 816,33 U.S.C. 1251, et seq.) and regulations promulgated thereunder.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-070 Air quality. Air emissions from energy facilities shall meet the requirements of applicable state air quality laws and regulations promulgated pursuant to the Washington (~~State~~) Clean Air Act, chapter (~~70.94~~) 70A.15 RCW, (~~and~~) the Federal Clean Air Act (42 U.S.C. 7401 et seq.), and chapter 463-78 WAC.

OTS-5600.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-64-020 Recommendations to governor—Approval or rejection of certification. The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within (~~(twelve)~~) 12 months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The draft site certification agreement shall include, but shall not be limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of the laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-64-030 Governor's action—Approval or rejection of certification, or reconsideration. Pursuant to RCW 80.50.100, within (~~(sixty)~~) 60 days of receipt of the council's report, the governor will take one of the following actions:

- (1) Approve the application and execute the draft certification agreement; the certification agreement shall be binding upon execution by the governor and the applicant;
- (2) Reject the application; or
- (3) Direct the council to reconsider certain aspects of the draft certification agreement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-64-040 Reconsideration of draft certification agreement. If directed by the governor under RCW 80.50.100 (~~((2)(c))~~) (3)(a)(iii) to reconsider certain aspects of the draft certification agreement, the council shall:

(1) Reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, reopen the adjudicative proceeding to receive additional evidence. Such reconsideration shall be conducted expeditiously.

(2) Resubmit the draft certification agreement to the governor incorporating any amendments deemed necessary upon reconsideration.

(3) Within (~~(sixty)~~) 60 days of receipt of such draft certification agreement, the governor will either approve the application and execute the certification agreement or reject the application. The

certification agreement shall be binding upon execution by the governor and the applicant.

OTS-5601.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-010 Purpose. This chapter sets forth the length of time before a site certification agreement expires if construction is not started, or commercial operation has not commenced, defines what activities constitute start of construction, and specifies the time frame within which a certificate holder must notify the council of the certificate holder's intentions, any project design changes, and the status of the site. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in this chapter (~~(463-36-WAC)~~), these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-030 Term for start of construction. Subject to conditions in the site certification agreement and this chapter, construction may start any time within (~~(ten)~~) 10 years of the effective date of the site certification agreement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-050 Submittal of plans and specifications prior to start of construction. At least (~~(ninety)~~) 90 days prior to start of construction as defined in WAC 463-68-040, a certificate holder shall provide the plans and specifications required by the site certification agreement to the council for approval.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-060 Review and reporting changes in the project status or site conditions. If construction does not both start within five years of the effective date of the site certification agreement and thereupon continue in a reasonably uninterrupted fashion toward project completion, then at least (~~(ninety)~~) 90 days prior to the end of the five-year period, the certificate holder shall report to the

council its intention to proceed or not to proceed with the project. If the certificate holder intends to proceed with the project, the certificate holder shall submit a report to the council describing:

(1) The nature and degree of any changes to the following since the effective date of the site certification agreement:

- (a) Project design;
- (b) Statements and information in the application;
- (c) Statements and information in project-related environmental documents; and
- (d) Project-related environmental conditions.

(2) Whether any new information or changed conditions indicate the existence of probable significant adverse environmental impacts that were not covered in any project-related environmental documents, including, but not limited to, those prepared under chapter 43.21C RCW.

(3) Suggested changes, modification, or amendments to the site certification agreement and/or any regulatory permits.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-080 Site certification agreement expiration. (1) If the certificate holder does not start or restart construction within ~~((ten))~~ 10 years of the effective date of the site certification agreement, or has canceled the project, the site certification agreement shall expire.

(2) If commercial operations have not commenced within ~~((ten))~~ 10 years of the effective date of the site certification agreement, the site certification agreement expires unless the certificate holder requests, and the council approves, an extension of the term of the site certification agreement.

(3) Upon a request to extend the term of the site certification agreement, the council may conduct a review consistent with the requirements of WAC 463-68-060 and 463-68-070, and other applicable legal requirements.

OTS-5602.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-010 Purpose. This chapter sets forth rules relating to monitoring the construction and operation of energy facilities to determine compliance with the terms of certification ~~((agreements))~~ and/or permits pursuant to RCW 80.50.040(9).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-020 Compliance to be determined. Compliance monitoring procedures shall be implemented by the council as necessary to determine compliance and keep it and the public properly informed as to the status of compliance with the terms of certification agreements and the Prevention of Significant Deterioration (PSD), National Pollutant Discharge Elimination System (NPDES), or other permits issued by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-070 Enforcement actions. (1) General. The council establishes four types of enforcement action in order to provide the council with a range of responses to apparent violations of a site certification agreement or the laws and rules enforced by the council. The range allows the chair or the council to choose an approach which it determines, in its discretion, to be best suited in light of the seriousness of an apparent violation, the potential danger to humans or the environment, the willingness and ability of the violator to make required corrections, and the speed with which corrective action should be taken.

(2) Emergency action by chair.

(a) Emergency action is appropriate when the chair or chair's designee believes that the nature of an apparent violation requires action too swiftly to allow for deliberation and decision by the full council or that action is required pending the completion of other enforcement action.

(b) The chair of the council or the chair's designee is authorized to take immediate action to halt or eliminate any imminent or actual substantial danger to health or welfare of persons or the environment resulting from violation of law or of terms of the site certification agreement, including the release of pollutants from facilities sited under chapter 80.50 RCW. The chair may:

(i) Order the immediate termination of an endangerment or an endangering release and the immediate suspension of a PSD, NPDES, or other permits issued by the council, or order the immediate commencement of corrective action;

(ii) Notify appropriate agencies that protective measures are required immediately to safeguard public health and safety;

(iii) Request the prosecuting attorney of an affected county or the attorney general to take immediate enforcement action for violations of certification agreements or permits pursuant to RCW 80.50.150(6).

(c) The council shall consider any emergency action at a regular or special meeting as soon as practical after the action is taken. It may adopt, rescind, or modify emergency action and may take other enforcement action as specified in this rule. The council retains jurisdiction to maintain or modify emergency action until the circumstances requiring the action are cured to the council's satisfaction or until other enforcement actions supersede the emergency action, whichever first occurs.

(d) If feasible, the council shall allow the subject of emergency action to present its views prior to adopting, affirming, or modifying the action.

(3) Notice of incident and request for assurance of compliance.

(a) A notice of incident is appropriate when the council believes that a violation has occurred; that it is being corrected quickly and effectively by the violator; that the violation caused no substantial danger to humans or the environment; and that a penalty assessment does not appear to be appropriate in light of the seriousness of the violation or as an incentive to secure future compliance.

(b) Whenever the council has probable cause to believe that any term or condition of a certificate agreement or permit has been violated, the council may serve a notice of incident and request for assurance of compliance upon the certificate holder. Within (~~thirty~~) 30 days after service of the notice, the certificate holder shall provide the council with a report of the incident and assurance of compliance, including appropriate measures to preclude a recurrence of the incident. The council shall review the assurance of compliance. It may close out the matter by resolution or take such further action as it believes to be necessary.

(4) Notice of violation.

(a) A notice of violation is appropriate when the council believes: That a violation has occurred; that a violation is not being timely or effectively corrected; that a violation may cause a substantial risk of harm to humans or the environment; or that a penalty may be appropriate as an incentive to future compliance.

(b) Whenever the council has probable cause to believe that a violation of any term or condition of a certificate agreement or permit has occurred, the council may serve upon the certificate holder a notice of violation and may include the assessment of a penalty pursuant to RCW 80.50.150 (~~(+5)~~) or (~~(RCW 74.90.431)~~) 70A.15.3160 if the violation is of the Washington Clean Air Act. The notice shall specify the provisions of law or rule or the certificate agreement or permit which are alleged to have been violated and shall include a requirement that corrective action be taken.

(c) Review procedure. The certificate holder named in a notice of violation may appeal the notice to the council and it may seek remission or mitigation of any penalty.

(i) A request for mitigation or remission of a penalty must be filed within (~~fifteen~~) 15 days after service of the notice of violation. A decision upon a request for remission or mitigation of a penalty is an administrative decision which the council may make in its discretion.

(ii) An appeal of a notice of violation must be filed within (~~thirty~~) 30 days after service of the notice of violation. The appeal is an application for an adjudicative proceeding under RCW 34.05.410. It must be in writing, timely filed in the offices of the council, and state the basis of the contention and exactly what change or remedy is sought from the council. Unless the application is denied or settled, the council shall conduct an adjudicative proceeding upon the challenge pursuant to chapter 34.05 RCW.

(iii) Any penalty imposed in a notice of violation shall be due and payable (~~thirty~~) 30 days after the following: Service of the notice of violation, if no review is sought; service of the council's decision upon remission or mitigation, if no appeal is made; or service of the council's final order on review of an appeal of a notice of violation. If the penalty is not paid when due, the council shall re-

quest the attorney general to commence an action in the name of the state to recover the penalty pursuant to RCW 80.50.150.

(5) Air emission violations. Consistent with RCW ((70.94.422)) 70A.15.3130, all council enforcement actions and penalties for all air emission violations shall be consistent with RCW ((70.94.332, 70.94.430, 70.94.431)) 70A.15.3010, 70A.15.3150, 70A.15.3160 (1) through (7), and ((70.94.435)) 70A.15.3170. The council may enter such orders as authorized by chapter 80.50 RCW regarding air pollution episodes or violations, as set forth in WAC 463-78-230.

(6) NPDES permit violations. In addition to the provisions of this chapter, council enforcement actions related to noncompliance with or violations of NPDES permits administered by the council shall be consistent with RCW 80.50.150, chapter 90.48 RCW, and chapter 463-76 WAC.

(7) Judicial enforcement.

(a) Judicial enforcement is available through chapter 80.50 RCW. It is appropriate when the council believes that judicial action may be of substantial assistance in securing present or future compliance or resolution of the underlying problem.

(i) The council may request the attorney general or the prosecuting attorney of any county affected by a violation to commence civil proceedings to enforce the provisions of chapter 80.50 RCW, pursuant to RCW 80.50.150(6).

(ii) The council may request the prosecuting attorney of any county affected by a violation to commence criminal proceedings to enforce the provisions of chapter 80.50 RCW, pursuant to RCW 80.50.150(6).

(b) The council may also secure judicial enforcement of its rules or orders pursuant to RCW 34.05.578.

OTS-5617.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-72-010 Purpose. This chapter sets forth rules for the content and timing of preparing site restoration or preservation plans for implementation at the conclusion of a plant's operating life; if a project is terminated; or if construction is suspended. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter ((463-36)) 463-66 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-72-040 Initial site restoration plan. (1) At least ((ninety)) 90 days prior to the beginning of site preparation, the

certificate holder shall provide the council with an initial site restoration plan which addresses site restoration occurring at the conclusion of the plant's operating life, or in the event the project is suspended or terminated during construction or before it has completed its useful operating life.

(2) The plan shall parallel a decommissioning plan, if such a plan is prepared for the project.

(3) The initial site restoration plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues presently anticipated. It shall describe the process used to evaluate the options and select measures that will be taken to restore or preserve the site or otherwise protect all segments of the public against risks or danger resulting from the site. The plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk and shall address provisions for funding or bonding arrangements to meet the site restoration or management costs. The provision of financial assurances shall include evidence of pollution liability insurance coverage in an amount justified for the project, and a site closure bond, sinking fund, or other financial instrument or security in an amount justified in the plan.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-72-050 Detailed site restoration plan—Terminated projects. When a project is terminated, a detailed site restoration plan shall be submitted within (~~ninety~~) 90 days from the time the council is notified of the termination. An extension of time may be granted for good cause shown. The site restoration plan shall address the elements required to be addressed in WAC 463-72-040, in detail commensurate with the time until site restoration is to begin. The council will act on the plan at the earliest feasible time and may take or require action as necessary to deal with extraordinary circumstances.

OTS-5618.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-74-030 Regulations. Notwithstanding the provisions of WAC 173-303-801, to the extent of their applicability and appropriateness, the provisions of chapter 173-303 WAC shall apply to the on-site activities, at energy facilities subject to this chapter, which involve the generation, storage, transportation, treatment, or disposal of dangerous wastes.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-74-040 Monitoring and enforcement. The council will contract with the department of ecology for the monitoring activities for dangerous wastes regulated by this chapter under a certification agreement. As a result of said monitoring activities, (~~DOE~~) the department of ecology shall report to the council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the council. The council shall then take or initiate action to enforce the terms of any certification agreement. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If the department of ecology determines that immediate action is needed to enforce the act or any statute or regulation derived therefrom, it shall report immediately to the (~~chairman~~) chair who shall initiate such immediate enforcement action as may be necessary. Such action shall remain in effect until confirmed or modified by the council.

OTS-5619.1

AMENDATORY SECTION (Amending WSR 15-24-041, filed 11/23/15, effective 12/24/15)

WAC 463-76-005 Purpose. (1) This chapter establishes regulations specifying procedures and other rules which will be utilized by the council in implementing section 402 of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. 1251 et seq.

(2) The purpose of these regulations is to establish a state permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state, which complies with the requirements of chapters 80.50 and 90.48 RCW, (~~EPA~~) section 402(b) of the FWPCA, and applicable state laws and regulations through the issuance of individual permits or coverage under stormwater general permits issued by the department of ecology.

(3) These regulations apply to:

(a) Any energy facility for which a certification agreement has been executed pursuant to chapter 80.50 RCW et seq.; and

(b) Any energy facility for which an application has been filed with the council for certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 90.48 RCW, chapter 155, Laws of 1973, and the act.

AMENDATORY SECTION (Amending WSR 15-24-041, filed 11/23/15, effective 12/24/15)

WAC 463-76-010 Definitions. As used in this chapter, the following terms shall have the meanings indicated below:

(1) "Act" means the Federal Water Pollution Control Act (FWPCA) as amended, (33 U.S.C. 1251, et seq.).

(2) "Administrator" means the administrator of the United States Environmental Protection Agency.

(3) "Applicable water quality standards" means all water quality standards of the state of Washington to which a discharge is subject under state and federal law including, but not limited to, those which are codified in chapters 173-200, 173-201A, and 173-204 WAC, and 40 C.F.R. 131.36.

(4) "Applicant" shall mean any person who has applied for an NPDES permit pursuant to this chapter.

(5) "Certification agreement" means that binding site certification agreement executed between an applicant under chapter 80.50 RCW and the state, and shall contain the conditions set forth in the NPDES permit to be met prior to or concurrent with the construction or operation of any energy facility coming under chapter 80.50 RCW.

(6) "Chair" means the ((~~chairman~~)) chair of the energy facility site evaluation council.

(7) "Contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(8) "Council" means the Washington state energy facility site evaluation council.

(9) "Council ((~~manager~~)) director" means the individual holding the position of ((~~manager~~)) director of the council.

(10) "Discharge of pollutant" and the term "discharge of pollutants" each mean:

(a) Any addition of any pollutant or combination of pollutants to surface waters of the state from any point source;

(b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source.

(11) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration or surface waters as may be present.

(12) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present. In case of subsurface sewage treatment and disposal, the term is restricted to mean those facilities treating and disposing of domestic wastewater only from a septic tank with subsurface sewage treatment and disposal and an ultimate design capacity exceeding ((~~fourteen thousand five hundred~~)) 14,500 gallons per day at any common point.

(13) "Ecology" means the Washington state department of ecology.

(14) "Effluent limitations" means any restriction established by the state of Washington or the administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into surface waters, the waters of the state, including schedules of compliance.

(15) "Energy facility" means any energy facility, as defined in RCW ((~~80.50.014~~)) 80.50.010.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "General permit" means a permit which covers multiple dischargers within a designated geographical area, in lieu of individual permits being issued to each discharger.

(18) "Governor" means the governor of the state of Washington.

(19) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Federal Water Pollution Control Act (FWPCA).

(20) "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the act and includes the Washington state program (set forth in chapter 151, Laws of 1973) for participation in said system which has been approved by the administrator in whole pursuant to section 402 of the act.

(21) "New source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants, the construction of which is commenced:

(a) After promulgation of standards of performance under section 306 of the act which are applicable to such sources; or

(b) After proposal of standards of performance in accordance with section 306 of the act which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within (~~one hundred twenty~~) 120 days of their proposal.

(22) "NPDES application" means the uniform national forms for application for a NPDES permit (including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the act) as prescribed by the council for use in the Washington state NPDES program.

(23) "NPDES form" means any issued NPDES permit, the NPDES application and the NPDES reporting form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the administrator.

(24) "NPDES permit" means the permit incorporated in the certification agreement issued by the council which regulates the discharge of pollutants pursuant to section 402 of the act.

(25) "NPDES program" means that program of the state of Washington pursuant to section 402 of the act.

(26) "NPDES reporting form" or "discharge monitoring report" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

(27) "Permit" means an authorization, license, or equivalent control document issued by the council to implement this chapter. "Permit" includes issuance of coverage under a stormwater general permit issued by the department of ecology. "Permit" does not include any permit which has not yet been the subject of final council action, such as a "draft permit" or a "proposed permit."

(28) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, local, state, or federal government agency, industry, firm, individual or any other entity whatsoever.

(29) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are

or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

(30) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean:

(a) Sewage from vessels within the meaning of section 312 of the act; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if such state determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(31) "Regional administrator" means the EPA's region X administrator.

(32) "State" means any of the ((fifty)) 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(33) "Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial facility. For energy facilities, the term includes, but is not limited to, stormwater discharges from industrial facility yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 C.F.R. 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this subsection, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above-described areas. The following additional categories of facilities are considered to be engaging in "industrial activity":

(a) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. subchapter N;

(b) Facilities where construction activity includes clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

(34) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 C.F.R. 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(35) In the absence of other definitions as set forth herein, the definitions as set forth in 40 C.F.R. 122.2 and 122.26(b) shall be used.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-031 Application filing with the council. (1) For each energy facility proposing to commence a discharge of pollutants to surface waters of the state, there shall be filed with the council:

(a) A complete NPDES application at the time of submitting an application for site certification to the council pursuant to RCW 80.50.071(~~(7)~~) for proposals to discharge wastewater or stormwater to surface waters of the state. Applicants may seek coverage for stormwater discharge associated with construction activity or stormwater from areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the areas described in WAC 463-76-010(33) under a NPDES stormwater general permit, promulgated by ecology. Any subsequent determination of such an NPDES application's adequacy shall not affect the council's finding that a complete application pursuant to RCW (~~(80.50.070)~~) 80.50.071 has been received.

(b) A complete NPDES application for any energy facility and not covered above shall be filed either:

(i) No less than (~~(one hundred eighty)~~) 180 days in advance of the day on which it desires to commence the discharge of pollutants; or

(ii) In sufficient time prior to the commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the act, and other applicable water quality standards and applicable effluent standards and limitations.

(2) Each person requesting an NPDES permit from the council shall be required to submit additional information as determined necessary by the council after an NPDES application has been filed and reviewed by the council. Information shall be provided in sufficient detail such as to fulfill the requirements of 40 C.F.R. 122.26(c).

(3) If an NPDES application is determined to be incomplete or otherwise deficient, the NPDES portion of any application filed pursuant to RCW (~~(80.50.070)~~) 80.50.071 shall not be processed until the applicant has supplied the missing information or otherwise corrected the deficiency.

(4) The council shall not consider any NPDES application for (~~(a)~~) an energy facility until and unless an application for certification is filed with the council pursuant to RCW (~~(80.50.070)~~) 80.50.071.

(5) Each NPDES application will be submitted on such form as specified by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-032 Signature form. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation. By a responsible corporate officer. For the purpose of this section, responsible corporate officer means:

(i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(i) The chief executive officer of the agency; or

(ii) A senior executive officer having responsibility.

(2) All reports required by permits, and other information requested by the council, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of facility manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to the council.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the council prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision

in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-034 Fact sheets. (1) The council shall prepare and include in any public notice given pursuant to WAC 463-76-041 a fact sheet with respect to the NPDES application described in the public notice. Such fact sheet shall include at least the following:

- (a) The type of facility or activity which is subject of the application;
- (b) A sketch or detailed description of the location of the discharge described in the NPDES application;
- (c) A quantitative description of the type of discharge described in the NPDES application which includes at least the following:
 - (i) The rate and frequency of the proposed discharge; as average daily flow in gallons per day or million gallons per day and whether the flow is continuous or intermittent;
 - (ii) For thermal discharges, the estimated maximum, minimum, and average summer and winter temperatures; and
 - (iii) The average daily discharge in pounds per day, or other appropriate units, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under this chapter and RCW 90.48.010, 90.54.020 and sections 301, 302, 306 or 307 of the act and regulations published thereunder;
- (d) The tentative determinations required under WAC 463-76-033.
- (e) The legal and technical grounds for the tentative determination, including an explanation of how conditions meet both the technology-based and water quality-based requirements of the act and chapters 90.48, 90.52, and 90.54 RCW;
- (f) The effluent standards and limitations applied to the proposed discharge;
- (g) The applicable water quality standards, including identification of the uses for which receiving waters have been classified by ecology;
- (h) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and
- (i) A description of the procedures to be used by the council in formulating final determinations for an NPDES permit, which shall include, but not be limited to:
 - (i) Thirty-day comment period required by WAC 463-76-041(2);
 - (ii) Procedures for requesting a public hearing and the nature thereof; and
 - (iii) Any other procedures by which the public may participate, either directly or through counsel for the environment, in the formulation of the final determinations, including the availability of any environmental assessments or detailed statements of environmental im-

fact and any public hearings which may be held by the council prior to the final determination on the NPDES application.

(2) The name of any person or group will be added to a mailing list upon request for receipt of copies of fact sheets. A fact sheet will be sent to the applicant and each person or group on such mailing list. Each person or group on such mailing list will be sent notice of any subsequent revision of the permit or fact sheet.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-041 Public notice. (1) The council shall circulate notice of the NPDES application and tentative determination within the geographical areas of the proposed discharge. Circulation shall include one or more of the following:

(a) Posting for a period of (~~(thirty)~~) 30 days in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(b) Posting for a period of (~~(thirty)~~) 30 days at or near the entrance of the applicant's principal place of business and in nearby places;

(c) Posting on the council's internet website;

(d) Publishing in a major local newspaper of general circulation.

(2) Any persons may, within (~~(thirty)~~) 30 days following the date of the public notice, submit their written views on the tentative determinations with respect to the NPDES application. All written comments submitted during the (~~(thirty)~~) 30-day comment period shall be retained by the council and considered in their final determination with respect to the NPDES applications. The period for comments may be extended at the discretion of the council.

(3) The contents of public notice of application for NPDES permits shall include at least the following:

(a) Name, address, and telephone number of the council;

(b) Name and address of applicant;

(c) Brief description of applicant's activities or operations which result in the discharge described in the NPDES application (e.g., thermal electric power generating facility stationary or floating);

(d) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is new, a modification, or an existing discharge;

(e) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;

(f) A brief description of the procedures for the formulation of final determinations, including the (~~(thirty)~~) 30-day comment period required by paragraph (2) of this section and any other means set forth in WAC 463-76-034 (1)(i).

(g) Address and telephone number of state or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to WAC 463-76-033(2), request a copy of the fact sheet described in WAC 463-76-034, and inspect and copy NPDES forms and related documents at a reasonable charge.

(4) The council shall notify the applicant and persons who have submitted written comments or requested notice of the final permit decision. This notification shall include response to comments received and reference to the procedures for contesting the decision.

(5) Public and agency notice will be given as set forth below:

(a) The council shall mail the notice to any person or group carried on the mailing list identified in WAC 463-76-034(2). Upon written request, the name of any person or group shall be added (~~upon written request~~) to a mailing list for distributing copies of notices for all NPDES applications within the state or within a certain geographical area.

(b) At the time of issuance of public notice pursuant to this section, a fact sheet will be sent to:

(i) Any other state whose waters may be affected by the issuance of the NPDES permit and to any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit and, upon request, providing such state and interstate agencies with a copy of the NPDES application and a copy of the proposed permit prepared pursuant to WAC 463-76-033(2). Each affected state and interstate agency shall be afforded an opportunity to submit written recommendations to the council and to the regional administrator, which shall be duly considered by the council in accordance with the policies, provisions and regulations of the act, chapter 80.50 RCW et seq., and chapter 34.05 RCW et seq.

(ii) The district engineer of the Army Corps of Engineers, the United States Fish and Wildlife Service, the United States National Oceanic and Atmospheric Administration - Fisheries, the state departments of ecology, fish and wildlife, natural resources, (~~and~~) social and health services, (~~the office of~~) and archaeology and historic preservation (~~office~~), applicable Indian tribes, and any other applicable government agency.

(iii) Any other federal, state, or local agency, Indian tribe, upon request and shall provide such agencies an opportunity to respond, comment or request a public hearing pursuant to WAC 463-76-042.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-042 Public hearings. (1) The applicant, any affected state, any affected interstate agency, any affected county, any interested agency, any affected tribe, person or group of persons, or the regional administrator may request of or petition the council for a public hearing on the council's tentative determination under WAC 463-76-033. Any such request or petition for public hearing shall be filed within (~~thirty~~) 30 days after the giving of public notice pursuant to WAC 463-76-041. Said request or petition shall indicate the interest of the party filing such request and the reasons why it is thought that a hearing is warranted.

(2) A public hearing shall be held if there is a significant public interest (including the filing of request(s) or petition(s) for such hearing) in holding such a hearing.

(3) Any hearings brought pursuant to this section shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the council, and may, as appropriate, consider related groups of permit applications.

(4) Any public hearings held hereunder will be conducted in accordance with provisions of RCW 80.50.090, chapter 34.05 RCW et seq., and regulations promulgated thereunder.

(5) Public notice of any hearing held pursuant to WAC 463-76-042 (1) through (4) shall be circulated at least as widely as was the notice of the NPDES application and shall include at least the following:

(a) Notice shall be published in at least one major local newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet;

(c) Notice shall be mailed to any person or group upon request; and

(d) Notice shall be effected pursuant to subparagraphs (a) and (c) of this paragraph at least (~~(thirty)~~) 30 days in advance of the hearing. The council may give notice of a public hearing concurrent with public notice given pursuant to WAC 463-76-041.

(6) The contents of public notice of any hearing held pursuant to WAC 463-76-042 (1) through (4) shall include at least the following notice which meets the requirements of this section:

(a) Name, address, and phone number of the council;

(b) Name and address of each applicant whose application will be considered at the hearing;

(c) Name of waterway to which each discharge is made and short description of the location of each discharge on the waterway;

(d) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance (where applicable);

(e) Information regarding the time and location for the hearing;

(f) The purpose of the hearing;

(g) A short and plain statement of the matters asserted;

(h) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to WAC 463-76-033(2) (~~above~~), request a copy of each fact sheet prepared pursuant to WAC 463-76-034, and inspect a copy NPDES forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed.

(7) The council shall cause a record to be made of all hearings required pursuant to this section. The record may be stenographic, mechanical, or electronic.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-043 Public access to information. (1) All records relating to NPDES applications (including the draft NPDES permit prepared pursuant to WAC 463-76-033(2) or any public comment upon those records pursuant to WAC 463-76-041(2)) shall be available to the public for inspection and copying consistent with WAC 463-06-110 - Copying and fees.

(2) Any information (other than effluent data) received by the council and contained in any NPDES forms, or other records, reports, or plans shall be protected as confidential upon a showing by any per-

son that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. Claims of confidentiality for the following information will be denied:

- (a) The name and address of any permit applicant or permittee;
- (b) Permit applicants, permits, and effluent data;
- (c) Information required by NPDES application forms pursuant to WAC 463-76-031 (~~(may not be claimed confidential)~~).

(3) Any information afforded confidential status shall be disclosed upon request to the regional administrator or his authorized representative who shall maintain the disclosed information as confidential.

(4) The council shall provide facilities for the inspection of nonconfidential information relating to NPDES forms during normal business hours of the council at its headquarters and shall insure that state employees will comply with requests for such inspection as soon as is reasonably possible without undue interference with council business. The council (~~(manager)~~) director shall insure that a machine or device for the copying of papers and documents is available for a reasonable fee as determined by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-051 General conditions. (1) Any NPDES permit shall be issued for a period of not longer than five years, which period shall start on the date of issuance of said permit. Review and reissuance of this authorization per WAC 463-76-061 to discharge wastewater, stormwater, and sanitary sewer wastes and any related changes to the site certification agreement shall not require approval of the governor. However, the permittee shall inform the council at least (~~(one hundred eighty)~~) 180 days prior to any initiation of such a discharge.

(2) The decision to approve or reject, and on what conditions an NPDES permit shall be issued, shall be in conformance with the requirements of this chapter. A majority vote of council members shall resolve any dispute and shall determine the approval or rejection of an NPDES application.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-052 Prohibited discharges. (1) No discharge regulated under the act shall be made by energy facilities subject to the jurisdiction of the council unless authorized by an NPDES permit issued pursuant to these regulations.

(2) No NPDES permit may be issued by the council:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of the act, or regulations promulgated under the act;

(b) When the applicant is required to obtain a state certification under section 401 of the act and 40 C.F.R. 124.53 and that certification has not been obtained or waived;

(c) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Washington state;

(d) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into surface waters of the state;

(e) For the discharge of any pollutants which the secretary of the Army acting through the chief, Corps of Engineers, finds would substantially impair anchorage and navigation in waters subject to the jurisdiction of the Corps of Engineers;

(f) For the discharge of any pollutant to which the regional administrator has objected in writing pursuant to any right to object provided the administrator in section 402(d) of the act;

(g) For discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the act;

(h) For the discharge of any pollutant subject to a toxic pollutant discharge prohibition under section 307 of the act;

(i) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(i) Before the promulgation of guidelines under section 403(c) of the act, unless the council determines permit issuance to be in the public interest;

(ii) After promulgation of guidelines under section 403(c) of the act, when insufficient information exists to make a reasonable judgment whether the discharge complies with them;

(j) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of effluent limitations required by sections 301 (b) (1) (A) and 301 (b) (1) (B) of the act, and for which the state has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of comment period, that:

(i) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(ii) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The council may waive the submission of information by the new source or new discharger required by (j) of this subsection if the council determines that the council already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet;

(k) Discharge any dangerous waste as defined in the Dangerous waste regulations, chapter 173-303 WAC, into a subsurface disposal system such as a well or drainfield.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-053 Effluent limitations, water quality standards, and other requirements for NPDES permits. (1) Any NPDES permit issued by the council shall apply and insure compliance with all of the following, whenever applicable:

(a) All known, available, and reasonable methods of treatment; including effluent limitations established under sections 301, 302, 306, and 307 of the act. The effluent limitations shall not be less stringent than those based upon the treatment facility design efficiency contained in approved engineering plans and reports or approved revisions thereto. The effluent limitations shall reflect any seasonal variation in industrial loading;

(b) Any more stringent limitation, including those:

(i) Necessary to meet water quality standards, treatment standards, or schedules of compliance established pursuant to any state law or regulation under authority preserved to the state by section 510 of the act; or

(ii) Necessary to meet any applicable federal law or regulation other than the act or regulations thereunder; or

(iii) Required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the act and any regulations and guidelines issued pursuant thereto;

(iv) Necessary to prevent or control pollutant discharges from facility site runoff, spillage or leaks, sludge or waste disposal, or materials handling or storage; and

(v) Necessary to meet the permit by rule provisions of the state dangerous waste regulation, WAC 173-303-802 (4) or (5).

(c) Any more stringent legal applicable requirements necessary to comply with a plan approved pursuant to section 208(d) of the act; and

(d) Prior to promulgation by the administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306 and 307 of the act, such conditions as the council determines are necessary to carry out the provisions of the act.

(2) In any case where an issued NPDES permit applies the effluent standards and limitations described in paragraph 1 of this section, the council shall make a finding that any discharge authorized by the permit will not have reasonable potential to violate applicable water quality standards and will have prepared some explicit verification of that finding.

(3) In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements pursuant to subsections (1) and (2) of this section, each issued NPDES permit shall specify:

(a) Average and maximum daily quantitative or other appropriate limitations for the level of pollutants in the authorized discharge. The average and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate;

(b) If a dilution zone is authorized within which water quality standards are modified, the dimensions of such dilution zone.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-054 Schedules of compliance. (1) With respect to any discharge which is found by the council not to be in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in WAC

463-76-053 (1)(b) and (c), the permittee shall be required to take specific steps to achieve compliance with the following:

- (a) Any legally applicable schedule of compliance contained in:
 - (i) Applicable effluent standards and limitations;
 - (ii) Water quality standards; or
 - (iii) Legally applicable requirements listed in WAC 463-76-053;

or

(b) In the absence of any legally applicable schedule of compliance, the permittee shall take the required steps in a reasonable period of time, such period to be consistent with the guidelines and requirements of the act.

(2) In any case where the period of time for compliance specified in paragraph (1)(a) of this section exceed nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; however, in no event shall more than nine months elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than nine months and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement. For each NPDES permit schedule of compliance, interim dates and the final date of compliance shall, to the extent practicable, fall on the last day of the months of March, June, September and December.

(3) Either before or up to (~~fourteen~~) 14 days following each interim date and the final date of compliance, the permittee shall provide the council with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(4) If a permittee fails or refuses to comply with an interim or final requirement in a permit, such noncompliance shall constitute a violation of the permit for which the council may modify or revoke the permit or take direct enforcement action.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-055 Other terms and conditions. In addition to the requirements of WAC 463-76-051, 463-76-052 and 463-76-053, each issued NPDES permit shall require that:

(1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; any facility expansions, production increases, or process modifications which would result in new or increased discharges of pollutants must be reported to the council by submission of a new NPDES application or supplement thereto or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the council of notice of such new or increased discharges of pollutants; any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

(2) The permit may be modified, suspended, or revoked in whole or in part during its terms for cause including, but not limited to, the following:

- (a) Violation of any term or condition of the NPDES permit;

(b) Obtaining an NPDES permit by misrepresentation or failure to disclose fully all relevant facts;

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; and

(d) A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.

(3) The permittee shall allow the council or its authorized representative upon the presentation of credentials and at reasonable times:

(a) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the NPDES permit;

(b) To have access to and copy at reasonable cost any records required to be kept under terms and conditions of the NPDES permit;

(c) To inspect any monitoring equipment or method required in the NPDES permit; or

(d) To sample any discharge of pollutants.

(4) The permittee shall at all times maintain a good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit.

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the permittee shall comply with that toxic effluent standard or prohibition even if this permit has not yet been modified to incorporate the requirement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-061 Reissuance of NPDES permits. (1) Any permittee shall make application for reissuance of an NPDES permit or continuation of discharges after the expiration date of the NPDES permit by filing with the council an application for reissuance of the permit at least (~~one hundred eighty~~) 180 days prior to its expiration.

(2) The scope and manner of any review of an application for reissuance of an NPDES permit by the council shall be sufficiently detailed as to insure the following:

(a) That the permittee is in compliance with or has substantially complied with all of the terms, conditions, requirements, and schedules of compliance of the expired NPDES permit;

(b) That the council has up-to-date information on the permittee's production levels, permittee's waste treatment practices, and the nature, content, and frequencies of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports submitted to the council by the permittee and;

(c) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in WAC 463-76-053 (1) and (2), including any additions to, or revisions or modifications of, such effluent

standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(3) The notice and procedures specified in WAC 463-76-041 and 463-76-042 are applicable to each request for reissuance of an NPDES permit.

(4) When a permittee has made timely and sufficient application for the renewal of a permit, an expiring permit remains in effect and enforceable until the application has been denied or a replacement permit has been issued by the council pursuant to WAC 463-76-0625 - Permit issuance.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-062 Modification of NPDES permit. (1) After notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the causes listed in WAC 463-76-055(2).

(2) The council may, upon request of a permittee, revise or modify a schedule of compliance in an issued NPDES permit if the council determines good and valid cause exists for such revision and if within (~~thirty~~) 30 days following receipt of notice from the council, the regional administrator does not object in writing.

(3) Any such modifications shall be executed by the council and the permittee in the same manner as the NPDES permit was executed, including full compliance with the requirements of WAC 463-76-041, 463-76-042 and 463-76-043.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-76-0625 Permit issuance. Any permit issued by the council pursuant to this chapter shall become an attachment to a site certification agreement. For an energy facility proposal requiring the execution of a governor-approved site certification agreement, the permit shall be effective upon the governor's approval and execution of the site certification agreement. For existing facilities under the jurisdiction of the council, revisions, modifications, or reissuance of the NPDES permit shall be effective when approved by the council and signed by the chair.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-064 Transmission to regional administrator of proposed NPDES permit. (1) Each proposed NPDES permit will be transmitted to the regional administrator in accordance with the following procedures:

(a) A copy of the proposed NPDES permit, including any and all terms, conditions, requirements, or documents which are a part of the

proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants except as to classes, types, or sizes within any category of point sources waived in writing by the regional administrator.

(b) The regional administrator shall be provided a (~~ninety~~) 90-day period, unless waived in advance, in which to comment upon, make recommendations with respect to, or object in writing to the issuance of the proposed permit pursuant to any right to object provided the administrator in section 402 (d) (2) of the act. No permit shall be issued if the regional administrator objects in writing to the issuance of such permit pursuant to any such right within said period, unless such objection is waived or withdrawn by the regional administrator in writing. Should no such objection be received within said period, it shall be presumed that the administrator has no objection to the issuance of the proposed permit.

(2) Immediately following execution by the applicant and the state, a copy of every issued NPDES permit along with any and all terms, conditions, requirements, or documents which are a part of such NPDES permit or which will affect the authorization of the discharge of pollutants will be sent to the regional administrator.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-065 Monitoring and enforcement. (1) Monitoring.

(a) Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the council, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). These monitoring requirements would normally include:

(i) Flow (in gallons per day);

(ii) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to limitation, reduction, or elimination under the terms and conditions of the permit;

(iii) Pollutants which the council finds could have a significant impact on the quality of waters of the state; and

(iv) Pollutants specified by the administrator, in regulations issued pursuant to the act, as subject to monitoring.

(b) Each effluent flow or pollutant required to be monitored pursuant to (a) of this subsection shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant.

Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

(c) Monitoring of intake water, influent to treatment facilities, internal waste streams, and/or receiving waters may be required when determined necessary by the council to verify compliance with net discharge limitations or removal requirements, to verify that proper waste treatment or control practices are being maintained, or to determine the effects of the discharge on the surface waters of the state.

(2) Recording of monitoring activities and results. Any permit which requires monitoring of the authorized discharge shall require that:

(a) The permittee shall maintain records of all information resulting from any monitoring activities required of them in their permit;

(b) Any records of monitoring activities and results shall include for all samples:

(i) The date, exact place, and time of sampling;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses (~~and~~).

(c) The permittee shall be required to retain for a minimum of three years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the council or regional administrator.

(3) Reporting of monitoring results.

(a) The permittee shall periodically report (at a frequency of not less than once per year) on the proper reporting form, the monitoring results obtained pursuant to monitoring requirements in a permit. In addition to the required reporting form, the council at its discretion may require submission of such other results as it determines to be necessary.

(b) Monitoring reports shall be signed by:

(i) In the case of corporations, by a responsible corporate officer or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge originates.

(ii) In the case of a partnership, by a general partner.

(iii) In the case of a sole proprietorship, by the proprietor.

(iv) In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

(4) Use of registered or accredited laboratories.

(a) Except as established in (b) of this subsection, monitoring data submitted to the council in accordance with this chapter shall be prepared by a laboratory accredited under the provisions of chapter 173-50 WAC. These requirements are effective and binding on all permittees under the authority of rule, regardless of whether they have been included as conditions of a permit.

(b) The following parameters need not be done by an accredited or registered lab:

(i) Flow;

(ii) Temperature;

(iii) Settleable solids;

(iv) Conductivity, except that conductivity shall be accredited if the laboratory must otherwise be registered or accredited;

(v) pH, except that pH shall be accredited if the laboratory must otherwise be registered or accredited;

(vi) Turbidity, except that turbidity shall be accredited if the laboratory must otherwise be registered or accredited; and

(vii) Parameters which are used solely for internal process control.

(5) Compliance monitoring. The council may establish an inter-agency contract with ecology for compliance monitoring activities of water discharges under a certification agreement which incorporates the NPDES permit. Monitoring and/or appropriate enforcement activities by ecology are authorized by WAC 463-70-060(1).

(6) Enforcement.

(a) Enforcement activities regarding the NPDES program, including the levying of civil and criminal fines pertaining to all energy facilities where the permit is issued by the council, shall be undertaken by the council, with assistance from ecology, the attorney general, or the prosecuting attorney, as appropriate.

(b) Pursuant to the provisions of RCW 80.50.150 - Enforcement of compliance penalties, the council shall take or initiate such actions to enforce the terms of any site certification agreement and the incorporated NPDES permit. The council may take any or all of the following actions:

(i) Assess or sue to recover in court such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of:

(A) Any effluent standards and limitations or water quality standards;

(B) Any permit or term or condition thereof;

(C) Any filing requirements;

(D) Any duty to permit or carry out inspection, entry, or monitoring activities; or

(E) Any rules, regulations, or orders issued by the council.

(ii) Request the prosecuting attorney to seek criminal sanctions for the violation of any permits or conditions thereof without the necessity of a prior revocation of the permit;

(iii) Request the prosecuting attorney to seek criminal sanctions for the violation by such persons of:

(A) Any effluent standards and limitations or water quality standards;

(B) Any permit or term condition thereof; or

(C) Any filing requirements.

(iv) Seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the council.

(v) Enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or effluent standards and limitations, or of permits or terms or conditions thereof.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-080 Transmittal of data to regional administrator.

(1) A complete NPDES form or relevant portions of any forms received by the council as outlined below shall be transmitted to the regional administrator upon receipt by the council.

(2) The regional administrator may object in writing to deficiencies in any NPDES application or reporting form and ~~((to required))~~ may require such deficiency to be corrected, so long as the administrator acts to inform the council by letter within ~~((twenty))~~ 20 days after receipt of the NPDES application or reporting form. If the regional administrator's objection relates to an NPDES application, the council will send to the regional administrator any information necessary to correct the deficiency. If the regional administrator so requests, the council will not issue the NPDES permit until they receive notice from the regional administrator that the deficiency has been corrected, which notice shall not be withheld for more than ~~((thirty))~~ 30 days.

(3) For all minor discharges, the council may require the operator of such a discharge to submit NPDES application forms or such other information as may be requested by the regional administrator.

(4) On the last day of the months of February, May, August, and November, the council shall transmit to the regional administrator a list of all instances in the previous ~~((ninety))~~ 90 days of failure or refusal of a permittee to comply with an interim or final requirement. Such list shall be available to the public for inspection or copying and shall contain at least the following information on each instance of noncompliance:

(a) Name and address of each noncomplying permittee;

(b) A short description of the instance of noncompliance (e.g., failure to submit preliminary plans, delay in commencement of construction of treatment facility, failure to notify the council of compliance with an interim requirement, etc.);

(c) A short description of any actions or proposed actions by the permittee or the council to comply or enforce compliance with the interim or final requirement; and

(d) Any details which explain or mitigate an instance of noncompliance with an interim or final requirement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-090 Conflict of interest. No member of the council shall have received, or has during the previous two years received, a significant portion of ~~((his))~~ their income directly or indirectly from permit holders or applicants for an NPDES permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of ~~((his))~~ their income" shall mean ~~((ten))~~ 10 percent of gross personal income for a calendar year, except that it shall mean ~~((fifty))~~ 50 percent of gross personal income for a calendar year if the recipient is over ~~((sixty))~~ 60 years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

OTS-5620.1

AMENDATORY SECTION (Amending WSR 15-16-033, filed 7/27/15, effective 8/27/15)

WAC 463-78-010 Purpose. The energy facility site evaluation council, under the authority vested in it by chapters 80.50 and ((70.94)) 70A.15 RCW, is charged with responsibilities for the conduct of a statewide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional, and local units of government in dealing with problems of air pollution.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-070 Radioactive emissions. (1) Energy facilities subject to chapter 80.50 RCW which emit radionuclides to the air shall meet standards and conditions pursuant to RCW ((70.94.331)) 70A.15.3000, as promulgated by chapters 173-480 and 246-247 WAC.

(2) The council will enter into a memorandum of agreement with the state department of health regarding the regulation of radionuclides.

(3) The monitoring and regulation of radionuclides emissions from major energy facilities shall be consistent with the memorandum of agreement referenced in subsection (2) of this section between the state department of health and the council.

AMENDATORY SECTION (Amending WSR 15-16-033, filed 7/27/15, effective 8/27/15)

WAC 463-78-095 Permit issuance. (1) Permit(s) issued for air emissions in accordance with chapter 463-78 WAC shall become an attachment(s) to a site certification agreement.

(2) For new energy facilities the permit(s) shall be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities and effective

upon the governor's approval and execution of the site certification agreement.

(3) Except as provided in subsection (4) of this section, for certified energy facilities, any change in terms or conditions, extension, revision, or reissuance of permit(s) issued for air emissions in accordance with chapter 463-78 WAC, shall be governed by applicable law and regulation and shall not require modification of the site certification agreement, or governor approval.

(4) Permit(s) for air emissions revised or issued in conjunction with a request for amendment of a site certification agreement that requires governor approval under WAC 463-66-080, shall be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities and effective upon the signed approval of the governor of Washington state.

AMENDATORY SECTION (Amending WSR 19-16-025, filed 7/26/19, effective 8/26/19)

WAC 463-78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(2) Requirement to register. Except as provided in subsection (3) of this section, the owner or operator of each source subject to chapter 80.50 RCW shall register the source with the council. Sources subject to the Operating permit regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

(3) The following sources are exempt from registration:

(a) A source that emits pollutants below the following emission rates:

Pollutant	Tons/Year
Carbon monoxide.....	5.0
Nitrogen oxides.....	2.0
Sulfur dioxide.....	2.0
Particulate Matter (PM).....	1.25
Fine Particulate (PM10).....	0.75
Volatile Organic Compounds (VOC)....	2.0
Lead.....	0.005

; and

(b) A source or emission unit that does not emit measurable amounts of Class A toxic air pollutants specified in WAC 173-460-150.

(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within (~~ninety~~) 90 days after beginning operation.

(5) Annual reregistration. After initial registration, the owner or operator of a source must reregister with the council by February 15th of each year. The reregistration must include all of the informa-

tion required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

- (a) Name of the source and the nature of the business;
 - (b) Street address, telephone number, and email address of the source;
 - (c) Name, mailing address, telephone number, and email address of the owner or operator;
 - (d) Name, mailing address, telephone number, and email address of the local individual responsible for compliance with this rule;
 - (e) Name, mailing address, telephone number, and email address of the individual authorized to receive requests for data and information;
 - (f) A description of the production processes and a related flow chart;
 - (g) Identification of emission units and air pollutant generating activities;
 - (h) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property;
 - (i) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis;
 - (j) Type and quantity of raw materials used on a daily and annual basis;
 - (k) Estimates of the total actual emissions for the air pollution source of the following air pollutants: Particulate matter emissions, PM_{10} emissions, sulfur dioxide (SO_2), nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H_2S), total reduced sulfur (TRS), and reduced sulfur compounds;
 - (l) Calculations used to determine the estimated emissions in (k) of this subsection;
 - (m) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and
 - (n) Any other information specifically requested by the council.
- (7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:
- (a) Source-specific emission tests;
 - (b) Mass balance calculations;
 - (c) Published, verifiable emission factors that are applicable to the source;
 - (d) Other engineering calculations; or

(e) Other procedures to estimate emissions specifically approved by the council.

(8) Other reports required.

(a) A report of closure shall be filed with the council within (~~ninety~~) 90 days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(b) A report of relocation of the source shall be filed with the council no later than (~~ninety~~) 90 days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within (~~ninety~~) 90 days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(10) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

(a) Public meetings or hearings on draft operating permits;

(b) Receipt of complete applications;

(c) Permit appeals;

(d) Issuance or denial of final permit, permit modifications, or renewals;

(e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit;

(f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-135 Criminal penalties. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW and RCW (~~(70.94.422)~~) 70A.15.3130.

AMENDATORY SECTION (Amending WSR 06-06-037, filed 2/23/06, effective 3/26/06)

WAC 463-78-140 Appeals procedure. (1) **Appeal of permits issued pursuant to WAC 173-400-110.**

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(3) Appeal of operating permits issued pursuant to chapter 173-401 WAC.

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the federal Clean Air Act, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

(4) Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 C.F.R. parts 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 C.F.R. part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than ~~((thirty))~~ 30 days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 C.F.R. part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 C.F.R. part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within ~~((thirty))~~ 30 days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-70-070 (4) (c).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-170 Conflict of interest. No member of the council shall have received, or has during the previous two years received, a significant portion of (~~his or her~~) their income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of (~~his~~) their income" shall mean (~~ten~~) 10 percent of gross personal income for a calendar year, except that it shall mean (~~fifty~~) 50 percent of gross personal income for a calendar year if the recipient is over (~~sixty~~) 60 years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-230 Regulatory actions. The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or (~~70.94.422~~) 70A.15.3130.

(1) Enforcement actions—Notice of violation. At least (~~thirty~~) 30 days prior to the commencement of any formal enforcement action under RCW (~~70.94.430~~) 70A.15.3150 and (~~70.94.431~~) 70A.15.3160 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing information to the council pertaining to the violation or the charges complained of. Every notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW (~~70.94.332, 70.94.430, 70.94.431~~) 70A.15.3010, 70A.15.3150, 70A.15.3160 (1) through (7), and (~~70.94.435~~) 70A.15.3170. Any person who violates any of the provisions of chapter (~~70.94~~) 70A.15 RCW may incur a civil penalty in an

amount as set forth in RCW (~~(70.94.431)~~) 70A.15.3160. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW (~~(70.94.431)~~) 70A.15.3160 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the (~~(ninety-first)~~) 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 (~~(thirty-first)~~) 31st day following final resolution of the appeal.

The maximum penalty amount established in RCW (~~(70.94.431)~~) 70A.15.3160 may be increased annually to account for inflation as determined by the state office of economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW (~~(70.94.422)~~) 70A.15.3130.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW (~~(70.94.015)~~) 70A.15.1010.

(e) In addition to other penalties provided by this chapter, persons knowingly under-reporting emission or other information used to set fees, or persons required to pay emission or permit fees who are more than (~~(ninety)~~) 90 days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) Assurance of discontinuance. The chair, or (~~(his/her)~~) their authorized representative, may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

(4) Restraining orders, injunctions. Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the council, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) Emergency episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance orders. The council may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

OTS-5621.1

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-005 Work in unison. The requirements of this chapter((7)) are based upon chapter 80.70 RCW and are separate and distinct from the requirements found in chapter 463-85 WAC - greenhouse gases performance standard that are based upon chapter 80.80 RCW. These two requirements are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard under chapters 80.80 RCW and 463-85 WAC. Once that standard is met, the requirements of chapters 80.70 RCW and 463-80 WAC are applied.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-020 Definitions. The definitions in this section are found in RCW 80.70.010 and apply throughout this chapter unless clearly stated otherwise. (~~The definitions are reprinted below.~~)

"Applicant" has the meaning provided in RCW 80.50.020 and is subject to RCW 80.70.020 (1) (a).

"Carbon credit" means a verified reduction in carbon dioxide or carbon dioxide equivalents that is registered with a state, national, or international trading authority or exchange that has been recognized by EFSEC.

"Carbon dioxide equivalents" means a metric measure used to compare the emissions of various greenhouse gases based upon their global warming potential.

"Certificate holder" means the company that holds a site certification agreement and is authorized to construct and operate an energy facility under chapter 80.50 RCW.

"Cogeneration credit" means the carbon dioxide emissions that EFSEC, department, or authority, as appropriate, estimates would be produced on an annual basis by a stand-alone industrial and commercial facility equivalent in operating characteristics and output to the industrial or commercial heating or cooling process component of the cogeneration plant.

"Cogeneration plant" means a fossil-fueled thermal power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

"Commercial operation" means the date that the first electricity produced by a facility is delivered for commercial sale to the power grid.

"Department" means the department of ecology.

"EFSEC" or "council" means the energy facility site evaluation council created by RCW 80.50.030.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Independent qualified organization" means a third-party company or organization that is independent of any energy facility that emits CO₂ and is recognized by the council to receive payment for selection, monitoring, and evaluation of CO₂ emissions mitigation activities.

"Mitigation plan" means a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits.

"Mitigation project" means one or more of the following:

(a) Projects or actions that are implemented by the certificate holder directly or through its agent, or by an independent qualified organization to mitigate the emission of carbon dioxide produced by the fossil-fueled thermal electric generation facility. This term includes, but is not limited to, the use of energy efficiency measures, clean and efficient transportation measures, qualified alternative energy resources, demand side management of electricity consumption, and carbon sequestration programs;

(b) Direct application of combined heat and power (cogeneration);

(c) Verified carbon credits traded on a recognized trading authority or exchange; or

(d) Enforceable and permanent reductions in carbon dioxide or carbon dioxide equivalents through process change, equipment shutdown, or other activities under the control of the applicant and approved as part of a carbon dioxide mitigation plan.

"Permanent" means that emission reductions used to offset emission increases are assured for the life of the corresponding increase, whether unlimited or limited in duration.

"Qualified alternative energy resource" has the same meaning as in RCW 19.29A.090.

"Site certification agreement" means the document as recommended by EFSEC and approved by the governor that lists the requirements and conditions for construction and operation of an energy facility, including any attached or associated permits or authorizations, for example a prevention of deterioration permit or notice of construction.

"Station generating capability" means the maximum load a generator can sustain over a given period of time without exceeding design limits, and measured using maximum continuous electric generation capacity, less net auxiliary load, at average ambient temperature and barometric pressure.

"Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1) (a) and (b), the amount of carbon dioxide emitted over a (~~(thirty)~~) 30-year period based on the manufacturer's or designer's guaranteed total net station generating capability, new equipment heat rate, an assumed (~~(sixty)~~) 60 percent capacity factor for facilities under EFSEC's jurisdiction and taking into account any enforceable limitations on operational hours or fuel types and use; and

(b) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1) (c) and (d), the amount of carbon dioxide emitted over a (~~(thirty)~~) 30-year period based on the proposed increase in the amount of electrical output of the facility that exceeds the station generation capability of the facility prior to the applicant applying for certification pursuant to RCW 80.70.020(1), new equipment heat rate, an assumed (~~(sixty)~~) 60 percent capacity factor for facilities under EFSEC's jurisdiction, and taking into account any enforceable limitations on operational hours or fuel types and use.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-030 Carbon dioxide mitigation program applicability.

(1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of ~~((three hundred fifty thousand))~~ 350,000 kilowatts or more and fossil-fueled floating thermal electric generation facilities of ~~((one hundred thousand))~~ 100,000 kilowatts or more under RCW 80.50.020 ~~((~~(15)~~(a)))~~ (14)(b), for which an application for site certification is made to EFSEC after July 1, 2004; and

(b) Fossil-fueled thermal electric generation facilities with station-generating capability of ~~((three hundred fifty thousand))~~ 350,000 kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to EFSEC to increase the output of carbon dioxide emissions by ~~((fifteen))~~ 15 percent or more through permanent changes in facility operations or modification of equipment.

(2) **New facilities.** Any fossil-fueled thermal electric generating facility is required to mitigate CO₂ emissions as described in chapter 80.70 RCW, if the facility meets the following criteria:

(a) An application was received after July 1, 2004; and

(b) The station-generating capability is 350 MWe or greater; or

(c) The facility is a fossil-fueled floating thermal electric generation facility subject to regulation by the energy facility site evaluation council.

(3) **Modifying existing fossil-fueled thermal electric generating facilities.** A fossil-fueled thermal electric generating facility seeking to modify the facility or any electrical generating units is required to mitigate the increase of the emission of CO₂, as described in RCW 80.70.020, when the following occur:

(a) The application was received after July 1, 2004;

(b) The unmodified station generating capability is 350 MWe or greater;

(c) The increase to the facility or units is the greater of the following measures:

(i) An increase in station-generating capability of more than 25 MWe; or

(ii) An increase in CO₂ emissions output by ~~((fifteen))~~ 15 percent or more.

(4) **Examples of fossil-fueled thermal electric generation units.** The following are some examples of fossil-fueled thermal electric generating units:

(a) Coal, oil, natural gas, or coke fueled steam generating units (boilers) supplying steam to a steam turbine - electric generator;

(b) Simple cycle combustion turbine attached to an electric generator;

(c) Combined cycle combustion turbines (with and without duct burners) attached to an electric generator and supplying steam to a steam turbine - electric generator;

(d) Coal gasification units, or similar devices, where the synthesis gas produced is used to fuel a combustion turbine, boiler, or similar device used to power an electric generator or provide hydrogen for use in fuel cells;

(e) Hydrocarbon reformer emissions where the hydrogen produced is used in fuel cells.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-050 Calculating total carbon dioxide emissions to be mitigated. (1) Step 1 is to calculate the total quantity of CO₂. The total quantity of CO₂ is referred to as the maximum potential emissions of CO₂. The maximum potential emissions of CO₂ is defined as the annual CO₂ emission rate. The annual CO₂ emission rate is derived by the following formula unless a differing analysis is necessary or appropriate for the electric generating process and type of equipment:

$$CO_{2rate} = \frac{F_s \times K_s}{2204.6} \times T_s + \frac{F_1 \times K_1}{2204.6} \times T_1 + \frac{F_2 \times K_2}{2204.6} \times T_2 + \frac{F_3 \times K_3}{2204.6} \times T_3 \dots \frac{F_n \times K_n}{2204.6} \times T_n$$

where:

- CO_{2rate} = Maximum potential emissions in metric tons per year
- F_{1-n} = Maximum design fuel firing rate in MMBtu/hour calculated as manufacturer or designer's guaranteed total net station generating capability in MWe times the new equipment heat rate in Btu/MWe. Determined based on higher heating values of fuel
- K_{1-n} = Conversion factor for the fuel(s) being evaluated in lb CO₂/MMBtu for fuel F_n
- T_{1-n} = Hours per year fuel F_n is allowed to be used. The default is 8760 hours unless there is a limitation on hours in a site certification agreement
- F_s = Maximum design supplemental fuel firing rate in MMBtu/hour, at higher heating value of the fuel
- K_s = Conversion factor for the supplemental fuel being evaluated in lb CO₂/MMBtu for fuel F_n given fuel
- T_s = Hours per year supplemental fuel F_n is allowed. The default is 8760 hours unless there is a limitation on hours in a site certification agreement

(a) When there are multiple new fossil-fueled electric generating units, the above calculation will be performed for each unit and the total CO₂ emissions of all units will be summed.

(b) When a unit or facility is allowed to use multiple fuels, the maximum allowed hours on the highest CO₂ producing fuels will be utilized for each fuel until the total of all hours per fuel add up to the allowable annual hours.

(c) When a new unit or facility is allowed to use multiple fuels without restriction, this calculation will be performed assuming that the fuel with the highest CO₂ emission rate is used 100% of the time.

(d) When the annual operating hours are restricted for any reason, the total of all T_{1-n} hours equals the annual allowable hours of operation in the site certification agreement.

(e) Fuel to CO₂ conversion factors (derived from the EPA's AP-42, Compilation of Air Pollutant Emission Factors):

Fuel	K _n lb/MMBtu
#2 oil	158.16
#4 oil	160.96
#6 oil	166.67
Lignite	287.50
Sub-bituminous coal	267.22
Bituminous coal, low volatility	232.21
Bituminous coal, medium volatility	241.60

Fuel	K_n lb/MMBtu
Bituminous coal, high volatility	262.38
Natural gas	117.6
Propane	136.61
Butane	139.38
Petroleum coke	242.91
Coal coke	243.1
Other fossil fuels	Calculate based on carbon content of the fossil fuel and application of the gross heat content (higher heating value) of the fuel
Nonfossil fuels	00.00

(2) **Step 2 - Insert the annual CO₂ rate to determine the total carbon dioxide emissions to be mitigated.** The formula below includes specifications that are part of the total carbon dioxide definition:

$$\text{Total CO}_2 \text{ Emissions} = \text{CO}_{2\text{rate}} \times 30 \times 0.6$$

(3) **Step 3 - Determine and apply the cogeneration credit (if any).** Where the cogeneration unit or facility qualifies for cogeneration credit, the cogeneration credit is the annual CO₂ emission rate (in metric tons per year) and is calculated as shown below or similar method:

$$\text{CO}_{2\text{credit}} = \frac{H_s}{2204.6} \times (K_a) \div n$$

where:

- $\text{CO}_{2\text{credit}}$ = The annual CO₂ credit for cogeneration in metric tons/year.
- H_s = Annual heat energy supplied by the cogeneration plant to the "steam host" per the contract or other binding obligation/agreement between the parties in MMBtu/yr as substantiated by an engineering analysis.
- K_a = The time weighted average CO₂ emission rate constant for the cogeneration plant in lb CO₂/MMBtu supplied. The time-weighted average is calculated similarly to the above method described in subsection (1) of this section.
- n = Efficiency of new boiler that would provide the same quantity of thermal energy. Assume $n = 0.85$ unless applicant provides information supporting a different value.

Calculate the metric tons of the cogeneration credit over the 30-year period.

$$\text{Cogeneration Credit} = \text{CO}_{2\text{credit}} \times 30$$

(4) **Step 4 - Apply the mitigation factor.**

(a) RCW 80.70.020(4) states that "*Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for ((~~twenty~~)) 20 percent of the total carbon dioxide emissions produced by the facility.*"

(b) The CO₂ emissions mitigation quantity is determined by the following formula:

$$\text{Mitigation Quantity} = \text{Total CO}_2 \text{ Emissions} \times 0.2 - \text{Cogeneration Credit}$$

where:

Mitigation quantity	=	The total CO ₂ emissions to be mitigated in metric tons.
CO ₂ rate	=	The annual maximum CO ₂ emissions from the generating facility in tons/year.
0.2	=	The mitigation factor in RCW 80.70.020(4).

(5) **Additional restrictions for modifications to an existing facility not involving installation of new generating units.** The quantity of CO₂ to be mitigated is calculated by the same methods used for the new generating units with the following restrictions:

(a) The quantity of CO₂ subject to mitigation is only that resulting from the modification and does not include the CO₂ emissions occurring prior to the modification;

(b) An increase in operating hours or other operational limitations established in a site certification agreement is not an exempt modification under this regulation. However, only increased CO₂ emissions related to the increase in operating hours or changes to any other operational restriction are subject to the CO₂ mitigation program requirements;

(c) The annual emissions (CO₂rate) is the difference between the premodification condition and the postmodification condition, but using the like new heat rate for the combustion equipment; and

(d) The cogeneration credit may be used, but only if it is a new cogeneration credit, not a cogeneration agreement or arrangement established prior to July 1, 2004, or used in a prior CO₂ mitigation evaluation.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-060 Carbon dioxide mitigation plan requirements and options. (1) **Once the total carbon dioxide emissions mitigation quantity is calculated, what is next?** The facility must mitigate that level of carbon dioxide emissions. A CO₂ mitigation plan is required and must be approved as part of a site certification agreement. A mitigation plan is a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits (RCW 80.70.010).

The approved mitigation plan must be fully implemented and operational in accordance with the schedule in the site certification agreement. The applicant may request an extension of the mitigation project implementation deadline. The request must be submitted in writing to EFSEC before the implementation deadline. The request must fully document the reason(s) more time is needed to implement the mitigation project and propose a revised schedule.

(2) **What are the mitigation plan options?** The options are identified in RCW 80.70.020(3), which states that "*An applicant for a fossil-fueled thermal electric generation facility shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:*

- (a) *Payment to a third party to provide mitigation;*
- (b) *Direct purchase of permanent carbon credits; or*

(c) *Investment in applicant-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration).*"

(3) **What are the requirements of the payment to a third-party option?** The payment to a third-party option requirements are found in RCW 80.70.020 (5) and (6). Subsection (5) identifies the mitigation rate for this option and describes the process for changing the mitigation rate. Subsection (6) describes the payment options.

The initial mitigation rate is **\$1.60 per metric ton** of carbon dioxide to be mitigated. If there is a cogeneration plant, the monetary amount is based on the difference between (~~(twenty)~~) 20 percent of the total carbon dioxide emissions and the cogeneration credit. The mitigation rate will change when EFSEC adjusts it through the process described in RCW 80.70.020 (5)(a) and (b). The total payment amount = mitigation rate x mitigation quantity.

An applicant may choose between **a lump sum payment or partial payment over a period of five years**. The **lump sum payment** is described in RCW 80.70.020 (6)(a) and (b). The payment amount is the mitigation quantity multiplied by the per ton mitigation rate. The entire payment amount is due to the independent qualified organization no later than (~~(one hundred twenty)~~) 120 days after the start of commercial operation.

The alternative to a one-time payment is a **partial payment** described in RCW 80.70.020 (6)(c). Under this alternative, (~~(twenty)~~) 20 percent of the total payment is due to the independent qualified organization no later than (~~(one hundred twenty)~~) 120 days after the start of commercial operation. A payment of the same amount (or an adjusted amount if the rate is changed under RCW 80.70.020 (5)(a)) is due on the anniversary date of the initial payment for the next four consecutive years. In addition, the applicant is required to provide a letter of credit or comparable security for the remaining 80% at the time of the first payment. The letter of credit (or comparable security) must also include possible rate changes.

(4) **What are the requirements of the permanent carbon credits option?** RCW 80.70.030 identifies the criteria and specifies that these credits cannot be resold without approval from EFSEC. The permanent carbon credit criteria of RCW 80.70.030(1) are as follows:

(a) Credits must derive from real, verified, permanent, and enforceable carbon dioxide or carbon dioxide equivalents emission mitigation not otherwise required by statute, regulation, or other legal requirements;

(b) The credits must be acquired after July 1, 2004; and

(c) The credits may not have been used for other carbon dioxide mitigation projects.

(5) **What are the requirements for the applicant-controlled mitigation projects option?** RCW 80.70.040 identifies the requirements for applicant-controlled mitigation projects. Subsections (1) through (5) specify the criteria. The direct investment cost of the applicant-controlled mitigation project including funds used for selection, monitoring, and evaluation of mitigation projects cannot be required by EFSEC to exceed the cost of making a lump sum payment to a third-party per subsection (3) of this section.

The applicant-controlled mitigation project must be:

(a) Implemented through mitigation projects conducted directly by, or under the control of the site certification agreement holder;

(b) Approved by EFSEC and incorporated as a condition of the site certification agreement; and

(c) Operational within one year after the start of commercial operation. Failure to implement an approved mitigation plan is subject to enforcement under chapter 80.50 RCW.

(d) The certificate holder may not use more than (~~twenty~~) 20 percent of the total funds for the selection, monitoring, and evaluation of mitigation projects, and the management and enforcement of contracts.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-070 Carbon dioxide mitigation option statement and mitigation plan submittal and approval. (1) Applicants must provide EFSEC with a statement selecting the mitigation option(s) in:

(a) Applications for site certification; or

(b) Requests to amend site certification agreements under chapter 463-66 WAC where changes to the facility will increase CO₂ emissions by (~~fifteen~~) 15 percent or more.

(2) Applicants choosing to use the payment to a third-party or the permanent carbon credit option must provide EFSEC with the documentation to show how the requirements will be satisfied before a recommendation to the governor is issued or an amendment to a site certification agreement is approved.

(3) Applicants seeking to use the applicant-controlled mitigation projects option must submit the entire mitigation plan to EFSEC. EFSEC will review the plan for consistency with the requirements of chapter 80.70 RCW.

(4) Approval of the mitigation plan will be by:

(a) The governor for approval of the application for site certification, or an amendment to the site certification agreement under WAC 463-66-080; or

(b) EFSEC for approval of an amendment to the site certification agreement under WAC 463-66-070.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-090 Independent qualified organizations list. (1) EFSEC shall develop and maintain a list of independent qualified organizations as required by RCW 80.70.050.

(2) To develop or update the independent qualified organization list, EFSEC shall issue a request for qualifications through use of a mailing list maintained by EFSEC and publication in a regional newspaper in both eastern and western Washington, and other appropriate forums.

(3) Proposals from independent qualified organizations shall, at a minimum, contain the following information:

(a) A demonstration of how the company or organization has successfully developed and managed programs to implement:

- Energy efficiency;
- Renewable energy projects;
- Clean and efficient transportation measures;

- Demand side management of electricity consumption; and
- Carbon sequestration programs.

(b) A complete description of the company or organization's specific expertise in the science and economics of greenhouse gas emissions mitigation, including proven ability to:

- Specify preferred offset types;
- Develop and issue requests for proposals;
- Evaluate and recommend projects;
- Assemble diverse portfolios;
- Negotiate offset contracts;
- Design monitoring and verification protocols, manage the implementation of offset contracts; and
- Maintain an offset registry and retired tons.

(c) Proven experience and demonstrated ability should include staff or organization experience. A new organization made up of experienced employees, or an existing organization with demonstrated accomplishments, should both be able to qualify. However, proven experience and demonstrated ability should be in the specific areas listed in this subsection.

(4) Using best professional judgment, EFSEC staff shall review each proposal and make recommendations to EFSEC whether a company or organization should be placed on the independent qualified organization list.

(5) After reviewing the EFSEC staff recommendations, and prior to making a decision to add a company or an organization to its list of independent qualified organizations, EFSEC may request the organization to testify at a public meeting or hearing to gain additional information and knowledge regarding the organization's experience and qualifications.

(6) Based on the EFSEC staff recommendation and information from public meeting(s) or hearing(s) (if held), EFSEC shall approve or deny companies' or organizations' placement on the list of independent qualified organizations.

(7) EFSEC may remove a company or organization from the independent qualified organization list at the request of the organization, or if EFSEC determines the organization is no longer capable or qualified to carry out CO₂ mitigation programs or activities.

(8) EFSEC shall update its list as it deems appropriate using the process described in this section.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-100 Independent qualified organization use of funds.

(1) An independent qualified organization shall not use more than (~~twenty~~) 20 percent of the total funds it receives for CO₂ mitigation for any of its activities in the selection, monitoring, or evaluation of a project.

(2) No independent qualified organization shall use any funds received for CO₂ mitigation to lobby federal, state, or local agencies, their elected officials, officers, or employees.

(3) If EFSEC finds that an independent qualified organization has violated subsection(~~s~~) (1) or (2) of this section, EFSEC may:

(a) Require the independent qualified organization to refund to the applicant or certificate holder the amount EFSEC determines was wrongfully spent; and

(b) Remove the organization from its list of independent qualified organizations.

(4) An organization found by EFSEC to have violated subsection((s)) (1) or (2) of this section and removed from EFSEC's list of independent qualified organizations may not apply or request listing on EFSEC's list for a period of four years after removal from the list.

OTS-5622.1

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-110 Definitions. The following definitions apply when these terms are used in the provisions of this chapter.

"Average available greenhouse gases emissions output" means the level of greenhouse gases emissions as surveyed and determined by the energy policy division of the department of ~~((community, trade, and economic development))~~ commerce under RCW 80.80.050.

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least ~~((sixty))~~ 60 percent. For a cogeneration facility, the ~~((sixty))~~ 60 percent annual capacity factor applies to only the electrical production intended to be supplied for sale. For purposes of this rule, designed means originally specified by the design engineers for the power plant or generating units (such as simple cycle combustion turbines) installed at a power plant; and intended means allowed for by the current permits for the power plant, recognizing the capability of the installed equipment or intent of the owner or operator of the power plant.

"Baseload electric cogeneration facility" means a cogeneration facility that provides baseload electric generation.

"Baseload electric generation facility" means a power plant that provides baseload electric generation.

"Benchmark" means a planned quantity of the greenhouse gases to be sequestered each calendar year at a sequestration facility as identified in the sequestration plan or sequestration program.

"Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for electrical power production.

"Change in ownership" as related to cogeneration plants means a new ownership interest in the electric generation portion of the cogeneration facility or unit.

"Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets Federal Energy Regulatory Commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 824a-3), as amended. In general, a cogen-

eration facility is comprised of equipment and processes which through the sequential use of energy is used to produce electric energy and useful thermal energy (such as heat or steam) that is used for industrial, commercial, heating, or cooling purposes.

"Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

"Commence commercial operation" means, in regard to a unit serving an electric generator, to have begun to produce steam or other heated medium, or a combustible gas used to generate electricity for sale or use, including test generation.

"Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

"Department" or "ecology" means the department of ecology.

"Electric generating unit (EGU)" is the equipment required to convert the thermal energy in a fuel into electricity. In the case of a steam electric generation unit, the EGU consists of all equipment involved in fuel delivery to the plant site, as well as individual boilers, any installed emission control equipment, and any steam turbine/generators dedicated to generating electricity. Where a steam turbine/generator is supplied by two or more boiler units, all boilers contributing to that steam turbine/generator comprise a single electric generating unit. All combustion units/boilers/combined-cycle turbines that produce steam for use in a single steam turbine/generator unit are part of the same electric generating unit.

Examples:

(a) For an integrated gasification combined-cycle combustion turbine plant, the EGU consists of all equipment involved in fuel delivery to the unit, as well as all equipment used in the fuel conversion and combustion processes, any installed emission control equipment, and all equipment used for the generation of electricity.

(b) For a combined-cycle natural gas fired combustion turbine, the EGU begins at the point where natural gas is delivered to the plant site and ends with the generation of electricity from the combustion turbine and from steam produced and used on a steam turbine.

(c) An EGU also concludes fuel cells fueled by hydrogen produced:

(i) In a reformer utilizing nonrenewable fuels; or

(ii) By a gasifier producing hydrogen from nonrenewable fuels.

"EFSEC" or "council" means the energy facility site evaluation council.

"Electric utility" means an electrical company or a consumer-owned utility.

"Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Long-term financial commitment" means:

- (a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or
- (b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

"MWh" = megawatt-hour electricity.

"MWh_{eq}" = megawatt-hour equivalent electrical energy of useful thermal energy output. 1 MWh_{eq} = 3.413 million Btu of thermal energy.

"New ownership interest" means a change in the ownership structure of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility affecting at least:

- (a) Five percent of the market value of the power plant or cogeneration facility; or
- (b) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multi-unit generation facility.

"Permanent sequestration" means the retention of greenhouse gases in a containment system using a method that is in accordance with standards approved by the department of ecology and that creates a high degree of confidence that substantially (~~((ninety-nine))~~) 99 percent of the greenhouse gases will remain contained for at least (~~((one thousand))~~) 1,000 years.

"Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

"Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council. A power plant may be comprised of one or more individual electrical generating units, each unit of which can be operated or owned separately from the other units.

"Regulated greenhouse gases emissions" is the mass of carbon dioxide emitted plus the mass of nitrous oxide emitted plus the mass of methane emitted. Regulated greenhouse gases emissions include carbon dioxide produced by a sulfur dioxide control system such as a wet limestone scrubber system.

"Renewable fuel" means:

- (a) Landfill gas;
- (b) Biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;
- (c) By-products of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; or
- (d) Gas from sewage treatment facilities.

"Renewable resources" means electricity generation facilities fueled by renewable fuels plus electricity generation facilities fueled by:

- (a) Water;
- (b) Wind;
- (c) Solar energy;
- (d) Geothermal energy; or

(e) Ocean thermal, wave, or tidal power.

"Sequential use of energy" means:

(a) For a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard; or

(b) For a bottoming-cycle cogeneration facility, the use of reject heat from a thermal application or process, at least some of which is then used for power production.

"Sequestration plan" means a comprehensive plan describing how a plant owner or operator will comply with the emissions performance standard by means of sequestering greenhouse gases, where the sequestration will start after electricity is first produced, but within five years of the start of commercial operation.

"Sequestration program" means a comprehensive plan describing how a baseload electric generation plant's owner or operator will demonstrate compliance with the emissions performance standard at start of commercial operation and continuing unchanged into the future. The program is a description of how the facility meets the emissions performance standard based on the characteristics of the baseload electric generation facility or unit or by sequestering greenhouse gases emissions to meet the emissions performance standard with the sequestration starting on or before the start of commercial operation.

"Supplementary firing" means an energy input to:

(a) A cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility;

(b) The electric generating process of a bottoming-cycle cogeneration facility; or

(c) Any baseload electric generation unit to temporarily increase the thermal energy that can be converted to electrical energy.

"Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful electrical power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy.

"Total energy input" means the total energy supplied by all fuels used to produce electricity in a baseload electric generation facility or unit.

"Total energy output" of a topping-cycle cogeneration facility or unit is the sum of the useful electrical power output and useful thermal energy output.

"Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade does not include:

(a) Routine or necessary maintenance;

(b) Installation of emission control equipment;

(c) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or

(d) Installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

"Useful energy output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.

"Useful thermal energy output" of a cogeneration facility means the thermal energy:

(a) That is made available to and used in an industrial or commercial process (minus any heat contained in condensate return and/or makeup water);

(b) That is used in a heating application (e.g., space heating, domestic hot water heating); or

(c) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller).

"Waste gas" is refinery gas and other fossil fuel derived gases with a heat content of more than 300 Btu/standard cubic foot. Waste gas does not include gaseous renewable energy sources.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-130 Emissions performance standard. (1) Beginning July 1, 2008, all baseload electric generation facilities or units and baseload electric cogeneration facilities and units subject to WAC 463-85-120 are not allowed to emit to the atmosphere regulated greenhouse gases at a rate greater than (~~1100 pounds per megawatt-hour, annual average~~) the amounts established in WAC 194-26-020, average available greenhouse gases emissions output, as now or hereafter amended.

(2) All baseload electric generation facilities and units in operation on or before June 30, 2008, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new long-term financial commitment.

(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded. For purposes of WAC 463-85-130, exclusive use of renewable fuel shall mean at least (~~ninety~~) 90 percent of total annual heat input by a renewable fuel.

(4) Compliance with the emissions performance standard may be through:

(a) Use of fuels and power plant designs that comply with the emissions performance standard without need for greenhouse gases emission controls; or

(b) Use of greenhouse gases emission controls and greenhouse gases sequestration methods meeting the requirements of WAC 463-85-220 or 173-218-115 as appropriate.

(5) The greenhouse gases emissions performance standard in subsection (1) of this section applies to all baseload electric generation for which electric utilities enter into long-term financial commitments on or after July 1, 2008.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-140 Calculating greenhouse gases emissions and determining compliance for baseload electric generation facilities. (1)

The owner or operator of a baseload electric generation facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall collect the following data:

(a) Fuels and fuel feed stocks.

(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric generation facility or unit.

(ii) Fuel usage and heat content, which are to be monitored, and reported as directed by WAC 463-85-230.

(b) Electrical output in MWh as measured and recorded per WAC 463-85-230.

(c) Regulated greenhouse gases emissions from the baseload electric generation facility or unit as monitored, reported, and calculated in WAC 463-85-230.

(d) Adjustments for use of renewable resources. If the owner or operator of a baseload electric generation facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by EFSEC or ecology as appropriate.

(2) By January 31st of each year, the owner or operator of each baseload electric generation facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Use the data collected under subsection (1) of this section to calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the total MWh produced in that year; and

(b) Submit that calculation and all supporting information to EFSEC.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-150 Calculating greenhouse gases emissions and determining compliance for baseload cogeneration facilities. (1) To use

this section for determining compliance with the greenhouse gases emissions performance standard, a facility must have certified to the Federal Energy Regulatory Commission (FERC) under the provisions of 18 C.F.R. 292 Subpart B as a qualifying cogeneration facility.

(2) The owner or operator of a baseload electric cogeneration facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall collect the following data:

(a) Fuels and fuel feed stocks.

(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric cogeneration facility or unit.

(ii) Fuel and fuel feed stocks usage and heat content, which are to be monitored((r)) and reported as directed by WAC 463-85-230.

(b) Electrical output in MWh as measured and recorded per WAC 463-85-230.

(c) All useful thermal energy and useful energy used for nonelectrical generation uses converted to units of megawatts energy equivalent (MW_{eq}) using the conversion factor of 3.413 million British thermal units per megawatt hour (MMBtu/MWh).

(d) Regulated greenhouse gases emissions from the baseload electric cogeneration facility or unit as monitored, reported, and calculated in WAC 463-85-230.

(e) Adjustments for use of renewable resources. If the owner or operator of a baseload electric cogeneration facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, the greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(3) Bottoming-cycle cogeneration facilities. The formula to determine compliance of a bottoming-cycle cogeneration facility or unit with the emissions performance standard will be jointly developed by ecology and the facility. To the extent possible, the facility-specific formula must be based on the one for topping-cycle facilities identifying the amount of energy converted to electricity, thermal losses, and energy from the original fuel(s) used to provide useful thermal energy in the industrial process. The formula should be specific to the installed equipment, other thermal energy uses in the facility, and specific operating conditions of the facility.

(4) Topping-cycle cogeneration facilities. To demonstrate compliance with the emissions performance standard, a topping-cycle facility or unit must:

(a) Determine annual electricity produced in MWh.

(b) Determine the annual electrical energy equivalent of the useful thermal energy output in MWh_{eq} .

(c) Determine the annual regulated greenhouse gases emissions produced in pounds.

(5) By January 31st of each year, the owner or operator of each baseload electric cogeneration facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the sum of the MWh and MWh_{eq} produced in that year; and

(b) Submit that calculation and all supporting information to EF-SEC or ecology as appropriate.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-220 Requirements for nongeologic permanent sequestration plans and sequestration programs. In order to meet the emissions performance standard, all baseload electric generation facilities or individual units that are subject to this rule, and must use nongeologic sequestration of greenhouse gases to meet the emissions perform-

ance standard, will submit sequestration plans or sequestration programs for approval to EFSEC or ecology, as appropriate.

(1) Sequestration plans and sequestration programs must include:

(a) Financial requirements. As a condition of plant operation, each owner or operator of a baseload electric generation facility or unit or baseload electric cogeneration facility or unit utilizing non-geologic sequestration as a method to comply with the emission performance standard in WAC 463-85-130 is required to provide a letter of credit sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan and sequestration program, including construction and operation of necessary equipment, and any other significant costs.

(i) The owner or operator of a proposed sequestration project shall establish a letter of credit to cover all expenses for construction and operation of necessary equipment, and any other significant costs. The cost estimate for the sequestration project shall be revised annually to include any changes in the project and to include cost changes due to inflation.

(ii) Closure and post-closure financial assurances. The owner or operator shall establish a closure and a post-closure letter of credit to cover all closure and post-closure expenses, respectively. The owner or operator must designate EFSEC as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure accounts shall cover all costs of closure and post-closure care identified in the closure and post-closure plan. The closure and post-closure cost estimates shall be revised annually to include any changes in the sequestration project and to include cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure accounts is enforceable regardless of whether the requirement is a specific condition of the permit.

(b) The application for approval of a sequestration plan or sequestration program shall include (but is not limited to) the following:

(i) A current site map showing the boundaries of the permanent sequestration project containment system(s) and all areas where greenhouse gases will be stored.

(ii) A technical evaluation of the proposed project, including but not limited to, the following:

(A) The name of the area in which the sequestration will take place;

(B) A description of the facilities and place of greenhouse gases containment system;

(C) A complete site description of the site, including but not limited to the terrain, the geology, the climate (including rain and snowfall expected), any land use restrictions that exist at the time of the application or will be placed upon the site in the future;

(D) The proposed calculated maximum volume of greenhouse gases to be sequestered and areal extent of the location where the greenhouse gases will be stored using a method acceptable to and filed with EFSEC or ecology as appropriate; and

(E) Evaluation of the quantity of sequestered greenhouse gases that may escape from the containment system at the proposed project.

(iii) A public safety and emergency response plan for the proposed project. The plan shall detail the safety procedures concerning the sequestration project containment system and residential, commer-

cial, and public land use within one mile, or as necessary to identify potential impacts, of the outside boundary of the project area.

(iv) A greenhouse gases loss detection and monitoring plan for all parts of the sequestration project. The approved greenhouse gases loss detection and monitoring plan shall address identification of potential release to the atmosphere;

(v) A detailed schedule of annual benchmarks for sequestration of greenhouse gases;

(vi) Any other information that the department deems necessary to make its determination;

(vii) A closure and post-closure plan.

(c) In order to monitor the effectiveness of the implementation of the sequestration plan or sequestration program, the owner or operator shall submit a detailed monitoring plan that will ensure detection of failure of the sequestration method to place the greenhouse gases into a sequestered state. The monitoring plan will be sufficient to provide reasonable assurance that the sequestration provided by the project meets the definition of permanent sequestration. The monitoring shall continue for the longer of (~~twenty~~) 20 years beyond the end of placement of the greenhouse gases into sequestration containment system, or (~~twenty~~) 20 years beyond the date upon which it is determined that all of the greenhouse gases have achieved a state at which they are now stably sequestered in that environment.

(d) If the sequestration plan or sequestration program fails to sequester greenhouse gases as provided in the plan or program, the owner or operator of the baseload electric generation facility or unit or baseload electric cogeneration facility or unit is no longer in compliance with the emissions performance standard.

(2) **Public notice and comment.** ESFEC must provide public notice and a public comment period before approving or denying any sequestration plan or sequestration program.

(a) Public notice. Public notice shall be made only after all information required by the permitting authority has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include analyses of the effects on the local, state, and global environment in the case of failure of the sequestration plan or sequestration program. The sequestration plan or sequestration program must be available for public inspection in at least one location near the proposed project.

(b) Public comment.

(i) The public comment period must be at least (~~thirty~~) 30 days long or may be longer as specified in the public notice.

(ii) The public comment period must extend through the hearing date.

(iii) EFSEC shall make no final decision on any sequestration plan or sequestration program until the public comment period has ended and any comments received during the public comment period have been considered.

(c) Public hearings.

(i) EFSEC will hold a public hearing within the (~~thirty~~) 30-day public comment period. EFSEC will determine the location, date, and time of the public hearing.

(ii) EFSEC must provide at least (~~thirty~~) 30 days prior notice of a hearing on a sequestration plan or sequestration program.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-230 Emissions and electrical production monitoring, recordkeeping, and reporting requirements. (1) Monitoring and record-keeping requirements. For all baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 463-85-120, the following parameters shall be monitored and reported as explained below:

(a) Electrical output: Electrical output as measured at the point of connection with the local electrical distribution network or transmission line, as appropriate. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard;

(b) Useful thermal energy output: Quantity of energy supplied to nonelectrical production uses determined by monitoring both the energy supplied and the unused energy returned by the thermal energy user or uses. The required monitoring can be accomplished through:

(i) Measurement of the mass, pressure, and temperature of the supply and return streams of the steam or thermal fluid; or

(ii) Use of thermodynamic calculations as approved by ecology.

(iii) Measurements will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard; and

(c) Regulated greenhouse gases emissions.

(i) The regulated greenhouse gases emissions are the emissions of regulated greenhouse gases from the main plant exhaust stack and any bypass stacks or flares. For baseload electric generation facilities or units and baseload electric cogeneration facilities or units utilizing CO₂ controls and sequestration to comply with the greenhouse gases emissions performance standard, direct and fugitive CO₂ emissions from the CO₂ separation and compression process are included.

(ii) Carbon dioxide (CO₂).

(A) For baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 463-85-120, producing 350 MW or more of electricity, CO₂ emissions will be monitored by a continuous emission monitoring system meeting the requirements of 40 C.F.R. Sections 75.10 and 75.13 and 40 C.F.R. Part 75 Appendix F. If allowed by the requirements of 40 C.F.R. Part 72, a facility may estimate CO₂ emissions through fuel carbon content monitoring and methods meeting the requirements of 40 C.F.R. Sections 75.10 and 75.13 and 40 C.F.R. Part 75 Appendix G.

(B) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 C.F.R. Part 75, the baseload electric generation facility operator or operator will substitute data according to the process in 40 C.F.R. Part 75.

(C) Continuous emission monitors for CO₂ will be installed at a location meeting the requirements of 40 C.F.R. Part 75, Appendix A. The CO₂ and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 C.F.R. Part 75, Appendix B.

(iii) Nitrous oxide (N₂O). For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 463-85-120 producing 350 MW or more of electricity, N₂O emissions shall be determined as follows:

(A) For the first year of operation, N₂O emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(B) For succeeding years, N₂O emissions will be estimated through use of generating unit specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing N₂O emissions from the stack at varying loads and through at least four separate test periods spaced evenly throughout the first year of commercial operation.

(iv) Methane (CH₄). For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing 350 MW or more of electricity, CH₄ emissions shall be determined as follows:

(A) For the first year of operation, CH₄ emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(B) For succeeding years, CH₄ emissions will be estimated through use of plant specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing CH₄ emissions from the stack at varying loads and through at least four separate test periods spaced evenly through the first year of commercial operation.

(d) Fuel usage and heat content information.

(i) Fossil fuel usage will be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(ii) Renewable energy fuel usage will be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(iii) Heat content of fossil fuels shall be tested at least once per calendar year. The owner or operator of the baseload electric generation facility or unit shall submit a proposed fuel content monitoring program to EFSEC for EFSEC's approval. Upon request and submission of appropriate documentation of fuel heat content variability, EFSEC may allow a source to:

(A) Test the heat content of the fossil fuel less often than once per year; or

(B) Utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(iv) Renewable energy fuel heat content will be tested monthly or with a different frequency approved by EFSEC. A different frequency will be based on the variability of the heat content of the renewable energy fuel.

(A) If the baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 463-85-120 using a mixture of renewable and fossil fuels do not adjust

their greenhouse gases emissions by accounting for the heat input from renewable energy fuels, monitoring of the heat content of the renewable energy fuels is not required.

(B) Upon request and with appropriate documentation, EFSEC may allow a source to utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(2) Reporting requirements. The results of the monitoring required by this section shall be reported to EFSEC and ecology annually.

(a) Facilities or units subject to the reporting requirements of 40 C.F.R. Part 75. Annual emissions of CO₂, N₂O, and CH₄ will be reported to ecology and EFSEC by January 31 of each calendar year for emissions that occurred in the previous calendar year. The report may be an Excel™ or CSV format copy of the report submitted to EPA per 40 C.F.R. Part 75 with the emissions for N₂O and CH₄ appended to the report.

(b) For facilities or units not subject to the reporting requirements of 40 C.F.R. Part 75, annual emissions of CO₂, N₂O, and CH₄ and supporting information will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-240 Enforcement of the emissions performance standard on schedule. Any power plant subject to WAC 463-85-120 that does not meet the emissions performance standard on schedule shall be subject to enforcement under chapter 80.50 RCW.

(1) Penalties can include:

(a) Financial penalties, which shall be assessed after any year of failure to meet a sequestration benchmark established in the sequestration plan or sequestration program. Each pound of greenhouse gases above the emissions performance standard will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of approval to construct the source or to operate the source.

(2) If a new, modified, or upgraded baseload electric generation facility or unit or baseload electric cogeneration facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program will be required to be submitted no later than (~~one hundred fifty~~) 150 calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program is to be submitted to EFSEC, as appropriate, for approval.

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility operated under an approved sequestration plan or sequestration program shall have the burden of proving to EFSEC in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration shall be

a condition to obtaining relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark shall be reported by January 31 of the year following the year during which the event occurred or as part of the routine sequestration monitoring reports. Upon request by EFSEC, the owner(s) or operator(s) of the sequestration project source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that the failure to meet a sequestration benchmark could not have been prevented through careful planning and design and if a bypass of equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) Maintenance. Failure to meet a sequestration benchmark due to scheduled maintenance shall be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance, or (~~through~~) better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations. Enforcement of any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.150.